
Digitized by the Internet Archive
in 2022 with funding from
Kahle/Austin Foundation

https://archive.org/details/commerciallawleg0000thom

INTERNATIONAL BUSINESS LIBRARY

COMMERCIAL LAW
AND
LEGAL FORMS

—BY—

THOMAS HERBERT RUSSELL, A. M., LL. D.

Dean of the Faculty, International Law and Business Institute;
former Editor-in-Chief Webster's Universal Dictionary, etc.

NATIONAL INSTITUTE OF BUSINESS
NEW YORK CHICAGO BOSTON

Copyright, 1910, by
INTERNATIONAL LAW AND BUSINESS INSTITUTE

Copyright, 1915, by
THE HAMMING-WHITMAN COMPANY
Chicago, Ill.

"It can be set down as a prime duty of every man to acquire a fair knowledge of law. Without it he lacks the fine finish of citizenship; he is not only unfitted to look after his own interests, but is unqualified to serve his country, his state, his town, or his community in any public capacity."

ASSOCIATE EDITORS.

RICHARD CANNING, president Northwestern Finance Company, Minneapolis, Minn.

H. M. COOMBS, special lecturer on Credits and Collections, International Law and Business Institute.

JAMES J. CRAIG, LL.D., special lecturer on Insurance, International Law and Business Institute.

C. A. ECKLUND, special lecturer on Accounting and Auditing and Financial Management, International Law and Business Institute.

W. J. JACKMAN, A. B., former managing editor of Chicago Evening Journal, and Sunday editor of The Inter Ocean; author of "Corporations: Organization, Finance and Management," "Real Estate Management and Transfer," etc.

G. A. ORTH, adjuster, Travelers' Insurance Co.

C. N. SMITH, special lecturer on Business Systems, International Law and Business Institute.

J. T. THOMPSON, formerly of the Ontario bar.

A. C. WILKINSON, special lecturer on Salesmanship and Advertising, International Law and Business Institute.

GEORGE E. YOUNG, of the Minnesota bar, special lecturer on Commercial Law and Corporations, International Law and Business Institute.

C. E. ZIMMERMAN, expert on Publicity and Sales Promotion, Chicago.

AUTHORITIES CONSULTED.

ALBERT R. BARNES, Attorney General, State of Utah.

W. P. BELL, Attorney General, State of Washington.

JAMES BREATHITT, Attorney General, Commonwealth of Kentucky.

FRANCIS M. BURDICK, Dwight Professor of Law in Columbia University Law School; author of "The Essentials of Business Law."

H. W. BYERS, Attorney General, State of Iowa.

"The Canadian Lawyer"—The Carswell Company, Limited, Toronto.

CHARLES E. CHADMAN, LL.D., of the Ohio bar; author of "The Home Law School Series."

HENRY E. CHASE, Deputy Attorney General, State of Michigan.

S. W. CLARK, Attorney General, State of South Dakota.

WILLIAM LAWRENCE CLARK, author of "Contracts," "Corporations," etc.

T. A. COLCLOUGH, Acting Deputy Attorney General, Province of Saskatchewan.

WM. G. CONLEY, Attorney General, State of West Virginia.

U. G. DENMAN, Attorney General, State of Ohio.

A. NORTON FITCH, of the Tacoma (Wash.) bar; formerly of the Rochester (N. Y.) bar; author of "New Commercial Law."

FRANK FORD, K. C., Deputy Attorney General, Province of Saskatchewan, Canada.

ALBERT J. GALEN, Attorney General, State of Montana.

F. L. GILBERT, Attorney General, State of Wisconsin.

CLIFFORD L. HILTON, Assistant Attorney General, State of Minnesota.

MARCUS H. HOLCOMB, Attorney General, State of Connecticut.

ERNEST W. HUFFCUT, former Dean of The Cornell University College of Law; author of "The Elements of Business Law."

EDGAR MATTHEW KEATOR, LL.B., of the New York bar.

JEWEL P. LIGHTFOOT, Attorney General, State of Texas.

J. FRASER LYON, Attorney General, State of South Carolina.

ANDREW MILLER, Attorney General, State of North Dakota.

EDWARD R. O'MALLEY, Attorney General, State of New York.

GEORGE PATERSON, Deputy Attorney General, Province of Manitoba.

WARREN C. PHILBROOK, Attorney General, State of Maine.

WILLIAM A. SCHONFELD, Attorney and Counsellor-at-Law; graduate of Union College of Law; of the University of Chicago, and Northwestern University; author of "A Compendium of Laws," together with "A Collection of Legal Forms."

GEORGE T. SIMPSON, Attorney General, State of Minnesota.

EDWARD W. SPENCER, of the Milwaukee bar; author of "Manual of Commercial Law;" "The Elements of Commercial Law;" etc.

W. H. STEAD, Attorney General, State of Illinois.

CHARLES THADDEUS TERRY, Secretary Conference of Commissioners on Uniform State Laws, New York.

PARK TRAMMELL, Attorney General, State of Florida.

CHARLES WEST, Attorney General, State of Oklahoma.

EDMUND WILSON, Attorney General, State of New Jersey.

Commercial Law
and
Legal Forms

CONTENTS.

PAGE

ASSOCIATE EDITORS AND AUTHORITIES CONSULTED 4

INTRODUCTION 17

Chapter I. LAW IN GENERAL 23

Definitions of Law—Related Terms—Various Kinds of Law—What is Law?—A Necessity of Civilization—Written and Unwritten Law—Why Men Obey Law—Property, Real and Personal—Statutes—Law and Equity—Law and Morality—Reports and Authorities—Constitutions—Federal and State Laws—Relative Authority—Conflict of Laws.

Chapter II. CONTRACTS 37

Definitions—Essentials of a Contract—Classification—Agreement—Offer and Acceptance—Offers Made on Time—Consent Must be Real—Statute of Frauds—Parties to a Contract—Consideration—Sufficiency of Consideration—Good and Valuable Considerations—The Need of a Consideration—Legality of Object—Interpretation or Construction—Assignment of Contracts—Negotiable Contracts—Remedies for Breach of Contract—How to Make a Contract.

Chapter III. SALES 81

Definitions—Essentials of the Contract—Examples of Sales, etc.—Uniform Sales Act—Formation of the Contract—Capacity—Form of the Contract or Sale—Statute of Frauds—Effect of the Statute of Frauds—Subject Matter of Contract—Existing and Future Goods—Destruction of Goods Sold—Undivided Shares—Destruction of Goods Contracted to be Sold

—The Price—Conditional Sales—Goods Sold on Trial—Sale at a Valuation—Warranties—Definition of Express Warranty—Implied Warranties of Title—Implied Warranty in Sale by Description—Implied Warranties of Quality—Sale by Sample—Implied Warranties in Sale by Sample—Transfer of Property—Property in Specific or Ascertained Goods Passes When Parties So Intend—Sale by Auction—Risk of Loss—Transfer of Title—Creditors' Rights Against Sold Goods in Sellers' Possession—Negotiable Document of Title—Performance of the Contract—Place, Time and Manner of Delivery—Delivery of Wrong Quantity—Right to Examine the Goods—What Constitutes Acceptance—Unpaid Seller's Lien—When Lien is Lost—Stoppage in Transit—When Goods Are in Transit—Ways of Exercising the Right to Stop—Resale by the Seller—Legality of the Sale—Effect of Illegality—Remedies for Breach of Contract—Remedies of the Seller—Action for the Price—Action for Damages for Non-Acceptance—When Seller May Rescind Contract—Remedies of the Buyer—Action for Converting or Detaining Goods—Action for Failing to Deliver Goods—Specific Performance—Remedies for Breach of Warranty—Exemptions.

Chapter IV. AGENCY. 107

Definitions—Agency in General—Who May Be Principal and Agent—Appointment and Authority—Scope of the Agent's Authority—Execution of Authority—Appointment and Ratification—Conditions of Ratification—Subagency—Implied Powers of Agent—Duties and Rights of Agents—Duties—Liability of an Agent—Rights of Third Parties—Principal's Liability—Agent's Liability—Factors and Brokers—

Definitions, etc.—Brokers' Commissions—Dissolution of Agency—By Limitation—By Direct Act of the Parties—By Change in Condition of Parties—Bankruptcy—Incompetency—Marriage—Death.

Chapter V. BAILMENTS 127

Definitions, etc.—Test of Bailment—Kinds of Bailments—Rights of Bailors and Bailees—Nature of the Bailment—Gratuitous Bailments—Bailments for Hire—Hired Services About the Property—Hired Use of Property—Degrees of Care—Pledge or Pawn—Postmasters—Innkeepers—Common Carriers—Telegraph Companies, etc.

Chapter VI. PARTNERSHIP 139

Definitions, etc.—Essentials of Partnership—The Firm—Who May Become Partners—Married Women—Various Kinds of Partners—Articles of Partnership—Partnership Property—Firm Name and Goodwill—Partnership Real Estate—The Powers of Partners—Rights and Duties—Power to Bind Firm—Sale of Partner's Interest—Particular Powers—Liabilities of Partners—Dissolution of Partnership—By Act of the Law—By Act of the Partners—Notice of Dissolution—Distribution of Assets—Limited Partnership.

Chapter VII. CORPORATIONS 151

Definitions, etc.—Rights Derived from the State—Diversity of State Laws—Draft of Tentative Uniform Act of Incorporation—Who May Be Incorporators—Articles of Incorporation—Subscriptions Paid in Property—Filing and Recording Fees—Organization Tax—Amendments of Articles—Filing with County Clerk—Restrictions Upon the Commencement of

Business—Powers of Corporations in General—Issue of Stock—How Title to Certificates and Shares May Be Transferred—Provision for Payment or Forfeiture——Organization Meeting—Stockholders' Meetings—Right to Vote—Shares Held by the Corporation—Liability of Stockholders—Limitation—Directors—Officers—Liability of Directors—By-laws—Corporate Records, Books, Semi-Annual Reports, Foreign Corporations—Penalty—Legislative Investigation—Voluntary Dissolution—Involuntary Dissolution—Effect of Dissolution—Interpretation—Definitions of Terms.

Chapter VIII. LANDLORD AND TENANT 185

Definitions, etc.—The Lease—Form of Lease—Term of the Lease—Rent—Lessors' Rights—Lessees' Rights—Repairs—Fixtures—Termination of Lease.

Chapter IX. NEGOTIABLE INSTRUMENTS.....191

Definitions—A Valuable Substitute for Money—In General—The Law is Exact—Form and Interpretation—Form of Negotiable Instrument—Certainty as to Sum—Determinable Future Time—Omissions; Seal; Particular Money—When Payable on Demand—When Payable to Bearer—Date, Presumption as To—Blanks; When May Be Filled—Delivery; When Effectual; When Presumed — Construction Where Instrument is Ambiguous—Liability of Person Signing in Trade or Assumed Name—Signature by Agent; Authority; How Shown—Liability of Person Signing as Agent, etc.—Effect of Indorsement by Infant or Corporation—Forged Signature; Effect of—Consideration—Presumption of Consideration—What Constitutes Consideration—Effect of Want of Consideration—Liability of Accommodation Party — Negotiation — What Constitutes

Negotiation—Indorsement; How Made—Kinds of Indorsement—Special Indorsement; Indorsement in Blank—Blank Indorsement; How Changed to Special Indorsement—When Indorsement Restrictive—Effect of Restricting Indorsement; Rights of Indorsee—Qualified Indorsement—Conditional Indorsement—Indorsement Where Payable to Two or More Persons—Effect of Instrument Drawn or Indorsed to a Person as Cashier—Indorsement Where Name is Misspelled, etc.—Indorsement in Representative Capacity—Place of Indorsement; Presumption—Rights of the Holder—Right of Holder to Sue; Payment—What Constitutes a Holder in Due Course—When Person Not Deemed Holder in Due Course—When Title Defective—Rights of Holder in Due Course—Who Deemed Holder in Due Course—Liabilities of Parties—Liability of Maker—Liability of Drawer—Liability of Acceptor—When Person Deemed Indorser—Warranty Where Negotiation by Delivery, etc.—Liability of General Indorser—Order in Which Indorsers are Liable—Liability of an Agent or Broker—Presentment for Payment—Effect of Want of Demand on Principal Debtor—Presentment Where Instrument is Not Payable on Demand and Where Payable on Demand—What Constitutes a Sufficient Presentment—Place of Presentment—Instrument Must be Exhibited—Presentment Where Instrument Payable at Bank—Presentment to Persons Liable as Partners—Presentment to Joint Debtors—When Presentment Not Required to Charge the Drawer—When Presentment Not Required to Charge the Indorser—When Delay in Making Presentment is Excused—When Presentment May be Dispensed With—When Instrument Dishonored by Non-Payment—Time of

Maturity—Time; How Computed—Rule Where Instrument Payable at Bank—Notice of Dishonor—To Whom Notice of Dishonor Must be Given—By Whom Given—Notice Given by Agent—When Agent May Give Notice—When Notice Sufficient—Form of Notice—Notice Where Party is Dead—Notice to Partners—Notice to Persons Jointly Liable—Notice to Bankrupt—Time Within Which Notice Must be Given—Where Parties Reside in Same Place—Where Parties Reside in Different Places—Notice to Subsequent Party—Waiver of Notice—Whom Affected by Waiver—Waiver of Protest—When Notice Need Not be Given to Drawer—When Notice Need Not be Given to Indorser—Notice of Non-Payment Where Acceptance Refused—When Protest Need Not be Made; When Must be Made—Discharge of Negotiable Instruments—How Discharged—When Persons Secondarily Liable Are Discharged—Right of Party Who Discharges Instrument—Renunciation by Holder—Cancellation; Unintentional; Burden of Proof—Alteration of Instrument—What Constitutes a Material Alteration—Bills of Exchange—Form and Interpretation—Inland and Foreign Bills of Exchange—When Bill May be Treated as Promissory Note—Referee in Case of Need—Acceptance—Acceptance by Separate Instrument—Promise to Accept—Time Allowed Drawee to Accept—Liability of Drawee Retaining or Destroying Bill—Kinds of Acceptances—Presentment for Acceptance—When Failure to Present Releases Drawer and Indorser—Presentment; How Made—Where Presentment is Excused—When Dishonored by Non-Acceptance—Duty of Holder Where Bill Not Accepted—Rights of Holder Where Bill Not Accepted—Protest—How Made—By

Whom Made—When to Be Made—Where Made—Protest Both for Non-Acceptance and Non-Payment—Protest Before Maturity Where Acceptor Insolvent—When Protest Dispensed With—Protest Where Bill is Lost—Acceptance for Honor—Presentment for Payment—Payment for Honor—Bills in a Set—Promissory Notes and Checks—Promissory Notes Defined—Check Defined—Definitions of Terms Used—Person Primarily Liable on Instrument—Reasonable Time, What Constitutes—Time, How Computed, When Last Day Falls on Holiday.

Chapter X. Common Carriers 233

Definitions, etc.—Kinds of Carriers—Common Carriers of Goods—Duties of Common Carriers—Duties of Senders—Remuneration of Carriers—Duty to Deliver—Provision of Facilities—Liability and Limitations—Carriers of Passengers.

Chapter XI. Bankruptcy 239

Origin of Insolvency Laws—Bankruptcy Laws—State Insolvency Laws—United States Bankruptcy Law of 1898—Acts of Bankruptcy—Who May Become Bankrupts—Proof and Allowance of Claims—Declaration and Payment of Dividends—Discharge of the Bankrupt.

Chapter XII. Patents and Copyrights..... 247

Definitions, etc.—Patent, Trademark, Copyright—Patent Office Procedure—Applications—Drawings and Models—Oath by Applicant—Issuance of Patent—Assignability of Patent—Reissues—Fees—Law and Rules of Practice—Caveats Abolished—Copyright Registration—Fees—The Copyright Notice—No Entry of Mere Names—Application Forms—Affidavit Forms—Renewal or Extension—Rules of Practice and Procedure—Hints to Expedite Copyright.

Appendix A. Declaration of Independence.....265
Appendix B. Constitution of the United States.....271
Dictionary of Law Terms in Common Use.....295
Legal Forms Used in Business.....311
Index 427
Questions for Review.....439

INTRODUCTION

To the average business man the law has long been to all intents and purposes a sealed book. Though every transaction of his daily life is necessarily based on well-defined legal principles, while all legitimate business enjoys the protection of the law and flourishes only under its ægis, the man of business has usually been content blindly to grope his way without seeking the light of a definite knowledge of those underlying principles or of the provisions of law that refer to his immediate affairs. Instead of recognizing its intimate relation to his interests, he has generally looked upon the law as something apart from his business.

The laws of business are, or should be, the rules that govern the conduct of business men. It stands to reason, therefore, that they should be known by them. The rules of every game must be known in order to play it successfully and the rules of Business, the greatest of all games, should be acquired by all business men who aim at the highest success. These rules are found in the principles and provisions of Commercial Law.

A knowledge of the law is of distinct value to all men. As Judge Timothy Walker, author of Walker's American Law, says, "Self-interest should induce every man to understand his own rights and obligations. This proposition is almost too clear to need enforcement. As

the *subjects* of law, certainly, if not as the *makers*, all ought to know enough to avoid its penalties and reap its benefits. Unquestionably, on the score of practical utility, no kind of knowledge can stand higher; for it comes into immediate application almost every hour we live."

Take the subject of Contracts, for instance. The idea of a contract, in the mind of the average man, is associated with a formal written agreement between two or more parties, drafted by a lawyer, solemnly signed and sealed in the presence of witnesses, attested by a notary public, and binding the parties more or less firmly by its formalities to a strict performance of its terms. But, as a matter of fact, the business man in every branch of affairs is continually making contracts of a binding character, consciously or unconsciously. When he makes or accepts an offer of any kind, in which a valid consideration is involved, it is a contract. Every purchase or sale is a contract. Every employment which he undertakes or in which he engages others involves a contract; his business correspondence and daily conversation with customers, employees and agents, are replete with contracts; in fact, almost every act or speech of daily business life establishes distinct legal relations and responsibilities of an important character, which the business men of the twentieth century should better understand.

Law and business are in truth so intimately connected as to be inseparable. One of the most famous financiers in the world recently remarked that "the greatest risk in business is the legal risk." It is the part of wisdom,

therefore, for the business man to minimize this greatest of all risks in business by seeking a knowledge of the legal ground whereon he stands.

It is not contended that every business man should learn enough law to be a lawyer, nor even that he should become his own lawyer. We are all familiar with the adage that "the man who is his own lawyer has a fool for a client," which is reasonably well grounded on common sense and experience. But we may also remember the cognate saying that "a man at forty is either his own physician or a fool." This does not signify that a wise man at forty should be able to dispense with the services of a physician when he is sick, but rather that he should have learned by study, observation and experience to take such care of his bodily health, and should be so familiar with the rules of hygiene, as to be able to minimize his chances of falling into sickness requiring a physician. So the business man may learn by a knowledge of Commercial Law how to minimize the legal risks of his business and thus avert many of the difficulties which require the more expert knowledge and legal acumen of the lawyer for their settlement in or out of court.

It is well known that very many of the civil suits that congest the courts are due to some slight misunderstanding, or the doing of some trivial act, or the neglect of some trifling precaution, which would not have occurred had the persons concerned possessed even an elementary knowledge of commercial law. It is also well understood that ignorance of the law excuses no man, yet many business men continue to take legal risks in their

affairs without a thought of the dangers they incur daily.

An equipment of legal knowledge, such as may be readily acquired by even a busy man, will prove profitable in warding off litigation, which is always troublesome and expensive; in preventing losses that may prove serious, and in maintaining the stability of a business. To conduct any business successfully requires a good pilot, and a good business pilot should know how to avoid all the legal rocks, shoals and breakers that lie athwart his course.

Young men who are preparing themselves for business careers should carefully ground themselves in Commercial Law. Theirs is an opportunity of immense value. At a receptive age, when study is easy and knowledge acquired by reading is more readily retained, they should neglect no chance to improve themselves in legal knowledge respecting commercial affairs.

It is a grave but common mistake to presuppose that study of the law is uninteresting. To the right-minded, no study is more interesting, embracing as it does the principles and rules that govern the rights of men and their relations with their fellows. It is an aid to good citizenship as well as to commercial power and success. As has been well said, "It can be set down as a prime duty of every man to acquire a fair knowledge of law; without it he lacks the fine finish of citizenship; he is not only unfitted to look after his own interests, but is unqualified to serve his country, his state, his town, or his community in any public capacity." A knowledge of the law places its possessor on a higher plane of manhood; it is broadening and uplifting in every way.

In this text volume the principal branches of Commercial Law are discussed in a simple illuminative way, freed as far as possible from technicalities or involved language. The object has been to state the general principles that most concern the business man and to show wherein they fit the majority of cases that arise in daily affairs. The leading subjects are presented in separate chapters, subdivided into sections for convenience of study and reference. The section devoted to legal forms used in business will be found extremely interesting and valuable, while a dictionary of law terms in common use and an index of a comprehensive character add to the usefulness of the work.

"Reason is the life of the law; nay, the common law itself is nothing else but reason . . . . The law is the perfection of reason."

—Sir Edward Coke (1549-1634).

CHAPTER I.

LAW IN GENERAL.

Definitions of Law.

Law is defined as a general rule of action or conduct established or enforced by a sovereign authority; as, a *law* of Cæsar; a *law* of God. Specifically, it is (a) any rule of civil conduct which will be recognized and enforced by the supreme judicial decision, whether established in a national or state constitution, by a lawmaking body in statutes, treaties, ordinances, etc., by the rulings of courts, or by common usage; as, a *law* of Ohio; a *law* of the land; (b) a statute, act, decree, ordinance, etc., as distinguished from a constitution; as, a *law* in conformity to the Constitution.

In a collective sense, law is the aggregate or entire body of established rules, in any matter; specifically, (a) the general rules of conduct with respect to rights and property, which will be enforced by the sovereign authority in any community or state, either by punishment for infraction, by interference to prevent disobedience, or by the restoration of things to the position in which they were before disobedience; as, civil *law;* criminal *law;* (b) the body of rules personified; as, the prisoner is in the hands of the *law;* (c) legal procedure; litigation; as, to go to *law;* (d) legal science; jurisprudence; as, to study *law;* (e) the profession of a lawyer; as, to practice *law;* (f) common law procedure or rules, as distinguished from those of equity; as, a case both at *law*

and in equity; (g) any rules agreed upon or recognized as binding between states, groups, or individuals; as, international *law;* commercial *law; laws* of etiquette or of a game; (h) a rule of conduct established by the ethical or religious nature of man; as, a moral *law;* a sacred *law;* (i) in the Bible, the books of Moses or the Mosaic code, as distinguished from the rest of the Old Testament, or from the New Testament; as, the *law* and the prophets; the *law* and the gospel.

Related Terms.

Law is the general term signifying a rule laid down or established, whether by custom or as the expression of the will of a person or power able to enforce its demands. Law implies a penalty or inconvenience for disobedience, and also generality of application as distinguished from a special command. A canon, order, regulation, or rule is a regular established method of procedure or action; as, canons of the church; naval orders; school regulations; office rules. A code is an entire system of rules or laws. A command, commandment, or mandate is a specific act of authority; as, a parent's command; the mandate of a court. Common law is the entire body of rules of conduct established by long usage and the decisions of law courts. A decree or an edict is a law or decision given by a sovereign power; as, an edict of Cæsar; a decree of the court. An act, enactment, or statute is a specific law enacted by the lawmaking body of a state, while an ordinance is usually a municipal regulation, though also used in a general sense. These are law only if they do not conflict with the organic law or constitution. Injunction is a general term, though specifi-

cally applied to an order of a court of equity. A formula is a conventional form or a set rule. [Webster's Universal Dictionary.]

Various Kinds of Law.

Civil law; (a) the law recognized and enforced as controlling the rights and conduct of the citizens of any state; (b) specifically the system of Roman law which forms the base of the legal systems of all the nations of continental Europe and is also the basis of the Louisiana code.

Commercial law, or *law merchant;* the customs observed by merchants and other business men in their dealings with each other, now part of the common law recognized and enforced by the courts. The term *commercial law* is also applied to statute laws affecting business.

Common law; (a) in general, the laws pertaining to an entire state or community; (b) especially, that system of unwritten law which forms the basis of the English legal system. Its source is the long continued usages or customs recognized as certain, reasonable, and compulsory, enforced by the interpretations and decisions of courts. The degree of antiquity necessary in a custom to entitle it to weight and authority, is that it must have been used time out of mind, or in the solemnity of the legal phrase, "time whereof the memory of man runneth not to the contrary." This is supposed in England to be the time prior to Richard II, who ruled from June 22, 1377, for twenty-three years.

Maritime or marine law; the system of law which relates to marine affairs generally, including navigation,

ships, seamen, and the transportation of persons and property by sea. Also called *admiralty law.*

Moral law; (a) that system of rules of human action which has its origin in a general sense of the members of any community of what is right and wrong, and which derives its authority from the general disapprobation of acts contrary to its principles; (b) the Decalogue and moral maxims of the Mosaic law.

Municipal law; a system of rules of human action established by the governmental power of a state.

Statute law; municipal law as defined by statutory enactments, as distinguished from the unwritten or common law.

Sumptuary laws; laws restricting or regulating wages, expenditures of individuals, prices of merchandise, etc., especially such as relate to extravagance, and those concerning the sale of liquors.

What is Law?

The question, What is Law? has been answered by a well-known member of the New York bar as follows:

Law is a rule of action, and it applies to mechanics, optics, gravity, etc., as well as to human beings. Each thing in the universe has a law by which its actions or progress is governed; but the kind of law with which we have to do, and the law that most of us understand when the word "law" is spoken, is a rule of *human* action.

The great mass of laws passed every year by our legislatures, as well as the common law, are rules laid down to govern your actions as well as mine. That is to say, they are rules of human action.

This mass of law by which we are governed is known among lawyers as municipal law. It is thus defined by Cicero: "Municipal law is a rule of civil conduct prescribed by the supreme power in a state, commanding what is to be done and forbidding the contrary."

Let us see how this definition of Cicero's applies to the laws of the United States. The supreme power in the United States is vested in the people. But the people as a body, because they are too numerous, cannot legislate for themselves; they therefore elect representatives to the legislatures for that purpose. These representatives pass laws that a majority of the people are supposed to favor, which laws are enforced by an executive who is also elected by the people. We thus see that Cicero's definition is quite as applicable today as when it was uttered. He says that such law "commands what is to be done and forbids the contrary." Blackstone's definition of municipal law, which has been much criticized, is as follows "Municipal law is properly defined to be a rule of civil conduct prescribed by the supreme power in a state, commanding what is right and prohibiting what is wrong."

Now, if we compare this definition with Cicero's and think a minute, we see that the former applies today while the latter does not. In the present day many laws are passed prohibiting many things that are not wrong, but because of the growth of industry, improved modes of travel, and mechanical inventions, such prohibitions have become absolutely necessary for the safety of the community. Take, for instance, the speed laws and ordinances which fix a penalty on one who drives a motor car through a city at a greater speed than, say, fifteen

miles an hour. There is nothing inherently wrong in such a performance, but because of the large population of cities and the number of vehicles in the streets, such laws are necessary for our protection. This is but one illustration of the law prohibiting something that is not of itself wrong; there are many others.

A Necessity of Civilization.

Without laws to govern his daily conduct man would soon revert to a state of savagery. Might would be right. The fellow with the biggest fist and the hardest muscle would soon have us all working for him under penalty of death. He would hold what he obtained by his superior powers just as long as his muscle and hard fist lasted, then some younger man with a harder fist or possibly a big stick would put an end to him and step into his place.

There would be no property rights whatever. No matter how hard we had striven for a thing, if he of might wished it he would take it away from us and we would have no redress. It is hard to conceive of such a state of things, but prehistoric man—the cave man—lived largely by means of muscular supremacy.

It was this injustice of the right of might that drew men together in an organized whole. Each individual of the whole sacrificed part of his liberty to save the rest. As we have seen, if he lives in a cave in full possession of all his liberties, he may, likewise, be deprived of all of them by some prowler of greater strength. If he comes under the protection of an organized society, he cannot be deprived of the rest of his liberties. If some one take his chattels from him by means of force, the state—

society—steps in and forces the transgressor, through its courts, to make good the wrong he has done the other.

The rulers of ancient Paris were well aware of this utility of the law. They impressed the necessity for laws on the minds of the populace by suspending their operation for a period of five days on the death of a sovereign.

Written and Unwritten Law.

The laws of the United States, as well as those of England, are commonly considered in two great divisions, namely, written and unwritten law. By unwritten law, we mean customary law, "that which usage has established; for ancient customs, being sanctioned by those who adopt them, are like laws."

The great body of the law governing our daily actions is this unwritten or customary law—the *lex non scripta.* The unwritten law of the United States is the common law of England transplanted here. It was brought here by the English colonists. As a matter of fact, it has long been reduced to writing by learned jurists in books on the subject. Blackstone's Commentaries are an exposition of this common law which he dug out of a mass of disconnected decisions of the early courts and the writings of ancient judges. All but one state in the Union, Louisiana, administers this common law. This state, which at one time was a French dependency, has the common law of France as the basis of its system of jurisprudence.

The written law, or *lex scripta,* is the statutory law, such as is passed every year by our legislatures and Congress. The Constitution of the United States and of the several states, and the treaties, are written law.

Why Men Obey Law.

Now this municipal law we have spoken of has to do with the protection and enjoyment of legal rights and to punish invasions of such rights. The reason men obey the law is because there is some penalty attached to disobedience of it. This is called the sanction of the law—the means by which it is enforced. If the owner of an automobile runs into you without fault on your part, you are given a right to bring an action against him for the damage he did you by running into you. This right to be allowed to walk in the street unmolested is an illustration of a legal right. In order to make our legal rights secure, the law sees that every person respects the rights of others. Hence, it is an old maxim of the law that a right cannot exist without a remedy; by this meaning that the law will not suffer a right to be infringed without providing a means for its redress.

Property, Real and Personal.

The great bulk of the law is the law of property. Property is anything capable of ownership. There are two kinds of property; real property and personal property.

Real property is land and everything above or below the surface that is of a fixed character. If you own a house and lot in the city, the house with the land on which it stands is real property, and you own from the center of the earth outward ad infinitum. If there are minerals in the backyard, buried many feet below the surface, you own them; they are a part of the real estate. The term

real property does not include anything built on the land for a temporary purpose, such as machinery in a factory. Under the common law it included growing crops on a farm, but in most states growing crops, raised from seed sown, are now regarded as personal property.

Personal property is said to accompany the person of the owner wherever he goes. It is not fixed like real property. Growing trees and crops were real property as long as they had not been cut from the land; but the moment they were cut and could be removed, they became personal property. Money, jewelry, all kinds of goods, are personal property. A leasehold for a term of years is personal property.

There are two terms applied to personal property that one will frequently meet. The two terms are "chose (from the French, meaning 'thing'; pronounced *shose*) in possession" and "chose in action." *A chose in possession* is any personal property of which a person has actual possession, as a horse, a ring, a book. A *chose in action,* however, is a right which we have to the possession of a thing, but possession of which has to be recovered by an action at law. If payment on a note is refused when it becomes due, you have a right to sue the one liable on the note for the money due thereon; a right to make a chose in action a chose in possession.

Statutes.

Statutes are the laws made by the act of the legislative power, to supply defects, or amend what is amiss, of the unwritten law. A statute is therefore the written will of the legislature solemnly expressed according

to the forms necessary to constitute it the law of the state.

Statutes are either public or private, in the latter case affecting an individual or a company; but the term is usually restricted to public acts of a general and permanent character. Statutes are said to be declaratory of the law as it stood before their passing; remedial, to correct defects in the common law; and penal, imposing prohibitions and penalties. The word Statute is commonly applied to the acts of a legislative body consisting of representatives.

Law and Equity.

In jurisprudence, equity is a term having three leading senses, distinguished as follows: (a) Taken broadly, equity means the doing unto all men as we would that they should do unto us. (b) In a narrower sense, equity is used in contra-distinction to strict law; it expounds and limits the language of the positive laws, and construes them, not according to their strict letter, but rather in their reasonable and benignant spirit. (c) In the sense in which it is to be understood as the substantial justice expounded by English and American courts of equity, it is the system of supplemental law administered in these founded upon defined rules, recorded precedents, and established principles, the judges, however, liberally expounding and developing them to meet new exigencies. Hence, a court of equity or chancery is a court which corrects the operation of the literal text of the law, and supplies its defects by reasonable construction, and by rules of proceeding and deciding which are not admissible in a court of law.

"Equity is a roguish thing;" said Selden, the great English lawyer, "for law, we have a measure, know what to trust to; equity is according to the conscience of him that is chancellor, and as that is larger or narrower, so is equity."

Law and Morality.

The moral law, or, as it is sometimes called, the divine law, implies "those rules or precepts which meet with the general approval of mankind because they satisfy what we call the conscience or the moral sense. These rules and precepts are not law at all in its technical or proper sense, except as far as they are influenced by public authority as above described."

Reports and Authorities.

The principles of the common law and of equity are obtained from the printed reports of court decisions and from the writings of men generally acknowledged as authorities. In their enunciation no set forms of words are used, but each writer expresses himself in laying down these principles in the manner that seems to him best suited to the purpose. In this respect these principles of common law and equity differ from the fixed, unvarying forms of expression employed in statutory law. The printed reports of the decisions of the courts in any case must therefore be consulted as well as the statutes of that state in order to ascertain definitely the law on any subject.

Each state has its own set of reports, but these are usually confined in most of the states to the decisions of the Supreme court of the state. There are also regularly published reports of the Federal or United States

courts. A knowledge of the common law on any subject can only be gained from the court reports.

The *precedents* that are so much relied upon by lawyers in the conduct of cases in court are the decisions, in cases of a similar character, preserved in the public records. The doctrine of the law is that they must be followed unless flatly absurd, unjust, unreasonable, or clearly at variance with the requirements and needs of the present time.

As the basis of the common law, the decisions of the courts of England are extant in a regular series of reports from the reign of Edward II. (1307) inclusive.

Constitutions.

The constitution is the fundamental law of a state or country, usually embodied in a written document or implied in its institutions and usages and defining the character and means of government.

"In the United States the word constitution means the written instrument agreed upon by the people of the Union or of a particular state as the absolute rule of action and decision for all departments and officers of the government in respect to all points governed by it, which must control until changed by the authority which established it and in opposition to which any act or ordinance of such department or officer is null and void."

Federal and State Laws.

Under the Constitution of the United States the Federal government is supreme within the scope of the powers delegated to it by the people through the Constitution. All laws must conform to and be authorized

by the Federal constitution and all laws of the several states that conflict with it thereby become inoperative and void. Each state has its separate constitution adopted at the erection of the state and every state law must conform to the state constitution, likewise to the constitution, laws and treaties of the United States.

An unconstitutional law is one found to be in conflict with the Federal or the state constitution.

Relative Authority.

On the subject of relative authority we quote the following from "New Commercial Law" by A. Norton Fitch, Esq.:

"In a country which has so many different kinds of law as the United States, it is necessary that there be some rule as to which shall be the highest in authority. The constitution of the United States is a direct expression of the will of the whole people and is, therefore, the highest in authority. It provides that on those subjects which come within the province of the general government the laws of Congress shall be the law of the land, any law of a state to the contrary notwithstanding. All subjects not within the province of the general government are left within the control of the states, unless the United States constitution expressly prohibits the states from passing any law on them. On subjects within the control of a state, its constitution, being the direct expression of the will of its people, is supreme; and next to this come the laws passed by its legislature. Underlying all these different kinds of law, most extensive by far, but least in authority, is the common law."

Conflict of Laws.

Where the common law and a statute differ, the common law gives place to the statute, and an old statute gives place to a new one. If a statute that repeals another is itself repealed afterward, the first statute is thereby revived, without any formal words being required for that purpose.

CHAPTER II.

CONTRACTS.

As business consists chiefly in the making of agreements that involve legal obligations, as in buying, selling, carrying, serving for hire, leasing, pledging, and the like, there is no more important topic in commercial law that that of Contracts.

"The principles of the law of contract," says Prof. William Lawrence Clark, "enter into and govern every business transaction—the sale and purchase of goods, the building of a house, the employment of an agent or clerk, the insurance of a building, a stock of goods, a vessel, or a cargo, the making, acceptance, indorsement, or transfer of a bill or note, the hiring of a horse, the carriage of goods, the formation of a partnership, subscription for stock in a corporation, or the transfer of stock, becoming surety or guarantor;—all of these and many other transactions which might be mentioned are governed by the general law of contracts."

We have seen that the common or unwritten law is based upon custom and usage, and that it is evidenced chiefly by decisions of the courts applying it to the facts arising in particular cases. The law of contracts is found chiefly in this common law, although the common-law rules have been to some extent changed or supplemented by statutes, as, for example, by the "Statute of Frauds" requiring certain contracts to be in writing.

The student should bear in mind that the general principles of the law of contracts apply, as a rule, to all kinds of contracts, whatever their nature, notwithstanding particular kinds may also be subject to certain special rules. This is true, for example, of contracts of sale, of bailment or carriage, of guaranty or suretyship, of insurance, etc.

Definitions.

A contract is defined as "an agreement or covenant between two or more persons, in which each party binds himself to do or forbear some act, and each acquires a right to what the other promises; a mutual promise upon lawful consideration or cause which binds the parties to a performance; a bargain; a compact."

Another definition is as follows: "An agreement resulting in legal obligation; an agreement upon a sufficient consideration, to do or not to do a particular thing. Every agreement and promise enforceable by law is a contract."

Prof. Clark says: "A contract, using the term in the proper sense, may be defined as 'an agreement enforceable at law, made between two or more persons, by which rights are acquired by one or more to acts or forbearances on the part of the other or others.' "

Prof. Huffcutt distinguishes a contract as follows: "A contract is an agreement between two or more persons for the breach of which a court of law will give damages. There are many agreements for the breaking of which no damages can be had, either because the agreement contemplates no legal relations or because it ends in a legal relation that is enforceable only in a court of equity."

Essentials of a Contract.

In order to constitute a binding contract, the following essentials must exist: (1) Competent parties; (2) a mutual consent or agreement expressed in offer and acceptance; (3) a real consent; (4) a sufficient consideration; (5) a lawful object; and (6) a compliance with the forms prescribed by law.

In the main, two principal ideas are involved, namely, (a) agreement and (b) obligation. "In short, the parties to every contract may be regarded as making, in some sense, a law for themselves; each being bound to make his conduct conform to his agreement, or else to pay damages or be otherwise subjected to some penalty or compulsion at the hands of the courts, at the suit of the other party." The *agreement* in a contract must be *enforceable at law.*

Classification.

Contracts are classified in various ways. Thus at common law, they may be either *formal* or *informal.* The former term includes contracts of record, such as judgments, and contracts under seal, called deeds, or specialties. Informal contracts, also called simple or parol contracts, include all others, whether written or verbal.

Contracts are also *executed* and *executory.* An executed contract is one in which the object of the contract is performed; as where an article is sold and delivered and payment therefor is immediately made. An executory contract is one in which some act of either party remains to be performed; as to agree to build a boat in a year, or to lend money upon interest to be paid at some future day.

Contracts may also be *express* or *implied*. An express contract is one in which the terms are openly uttered or avowed at the time of making; as to pay a stated price for certain goods. An implied contract is one that may be inferred from the acts of the parties, according to the ordinary course of dealing and common understanding among men. It is a well-settled general rule that no contract will be implied where there is an open and subsisting express contract between the parties in reference to the same subject-matter.

Contracts in which there are reciprocal promises—that is, promises on both sides—are called *bilateral*. Those in which there is a promise on one side only, the consideration on the other side being executed, are called *unilateral*.

Agreement.

Every true contract begins with an agreement. The agreement is the assent of the parties to the thing to be done or "the meeting of the minds of the contracting parties on a common assent to the same definite conclusion."

Usually there are only two parties to a contract, though either one or both of these parties may consist of several persons.

The agreement is arrived at by an offer by one party and an acceptance of that offer by the other party. Each party must clearly express his assent before he is legally bound.

The offer by one party must be accepted by the other within the time named in the offer or within a reasonable time if none is named, and the offerer must be informed

of its acceptance. He can withdraw his offer at any time before it is accepted.

The state of the mind of a party is judged by what he says and does. He can not agree to a definite thing and afterwards escape obligation upon the plea that he misunderstood the offer or misstated his acceptance.

The acceptance must be of the exact offer made, and if the offer is once rejected it must be renewed by the offerer before it can be accepted afterward.

Agreements must be definite, so as to enable a court to ascertain and enforce the terms. A court will not complete an incomplete agreement for the parties or make fresh terms. Indefinite and uncertain agreements are not enforceable.

Both the offer and the acceptance must be made with the intent to affect legal rights, not in jest or as a social engagement. No formalities are necessary, but the communications passing between the parties may be by word of mouth, letter, telegram, even by conduct, provided there be a meeting of minds and an intention to contract.

In Clark on Contracts, an agreement is defined as "the expression of two or more persons, either by word or by conduct, of a common intention to affect the legal relations of those persons. There must be a meeting of two minds in one and the same intention." Without this there can not be a contract.

A Distinct Intention.—It is essential to agreement that there should be a distinct intention common to both of the parties. If there is doubt or a difference there is no meeting of minds, and hence no agreement or contract.

Thus, suppose A says or writes to B, "Will you sell me your horse Sam for one hundred dollars?" B replies, "Very likely." This involves doubt, and therefore no agreement is reached.

Again, suppose A says or writes to B, "I will buy your horse Sam for one hundred dollars, if you will sell him to me," and B replies, "I will sell him to you thirty days from now," or "I will sell him to you for one hundred and fifty dollars." Here there is difference of intention, and therefore no agreement or contract.

But suppose A says to B, "I will buy your horse Sam for one hundred dollars," and B replies, "All right; he is yours at that price." Here there is neither doubt nor difference, and there is a valid contract, binding B to deliver the horse to A, and binding A to pay B one hundred dollars for him.

Communication.—There can be no agreement and therefore no contract unless the parties mutually communicate their intentions, and this may be done verbally, in writing, or by conduct. Such communication is required by law, for without it neither party can know the other's intention. Though both parties may have the same intention, if it is uncommunicated it can not constitute agreement. Thus A may offer to sell a horse to B in thirty days and B may fully intend to accept the offer and take the horse, but if he does not communicate his intention to B by speech or writing, there is no agreement, hence no contract; and A is not obliged to deliver the horse to B at the end of the time specified even should B call for it. This is an elementary but highly important rule.

Offer and Acceptance.

In making the offer the offerer can prescribe the time, the place, and the terms of acceptance, and the acceptance must be in accordance with these conditions.

The offer may be revoked at any time before acceptance by notifying the other party of its withdrawal; and this is true even though the offerer agrees to allow it to continue for a certain time, if there be no consideration for this purpose. Thus bids at auction may be withdrawn at any time before the hammer is down.

An offer may be made by public advertisement, as the public offer of a reward for any special service. Such an offer may be accepted by the performance of such service by any one of the persons to whom it is directed, and may thus become a binding contract. But it may be publicly revoked at any time before such performance of the service has taken place.

Agreement by mail.—Where an offer is made by letter and accepted by mailing a letter of acceptance before receiving notice of withdrawal, the contract is binding even though the offerer has mailed a letter withdrawing his offer before receiving the acceptance. It has also been held that if the letter of acceptance be properly mailed, it will bind the offerer even though never received by him. Similar principles apply to contracts made by telegraph.

Consent Must be Real.

Where there has been a *mistake* in fact by either party as to the person with whom he is contracting, or a mutual mistake as to the subject-matter or in stating the terms of agreement, the minds of the parties have not met, and

the contract cannot be enforced. But a mistake as to a matter of law is ordinarily no defense to a contract.

There may also be no real consent, and therefore no contract, because of *innocent misrepresentation, fraud, duress,* or *undue influence.*

Misrepresentation is an *innocent* misstatement or nondisclosure of facts. But where it has any effect, as in contracts of insurance, etc., it renders the contract *voidable* and not void.

Fraud is the ground upon which contracts are most frequently avoided. Fraud is defined as false representation of fact made with a knowledge of its falsity, or recklessly, without belief in its truth, with the intention that it should be acted upon by the complaining party, and actually inducing him to act upon it. To constitute fraud, the misrepresentations must be: (1) Of a material fact susceptible of knowledge as distinguished from a mere opinion or conjecture; (2) made with the intent that the other party should act thereon; (3) known to the parties making them to be false; and (4) relied upon by the other party to his injury.

The law will not relieve any party from the consequences of his own carelessness; so, where the means of knowledge are equally open to both parties, as in the case of a purchase of goods on exhibit, the purchaser must take the consequences of his own carelessness in not examining the goods for patent defects.

Fraud does not render a contract void absolutely, but voidable only at the option of the defrauded party. The injured party therefore may, within a reasonable time after discovering the fraud, affirm the contract and sue for the damages caused by fraud, or may rescind the

contract and either sue for any amount paid thereunder or return what he has received and refuse to pay for it.

Duress.—Where the consent to the contract has been obtained by duress, the contract cannot be enforced. *Duress* of the person is actual or threatened violence or imprisonment, by reason of which one is unreasonably forced to enter into a contract, and renders the contract voidable at his option. And the unlawful detention or threatened destruction of another's goods under oppressive circumstances, called "duress of goods," may have the same effect.

Undue influence.—Where the parties to the contract are in such a relation that it is presumed that confidence is placed and influence exerted, as in the case of parent and child, guardian and ward, or attorney and client, the law will scrutinize the contract very closely; and if from all the circumstances of the case it appear that the influence was sufficient to destroy the freedom of the will, the contract is voidable at the option of the injured party, relief being sought in courts of equity. Whatever destroys free agency and constrains the person whose act is brought in judgment to do something against his will is undue influence, which is a species of fraud.

Statute of Frauds.

The Statute of Frauds (so called because it was intended to prevent fraud and perjury in the proving of contracts before the courts) was enacted by the English Parliament in 1676 and has been substantially reenacted in whole or in part, by most of the American states.

Two sections of this statute, the fourth and the seventeenth, are those that deal particularly with contracts.

Fourth section. The fourth section provides in substance that in order to be enforceable the following contracts, or some note or memorandum of them, shall be in writing and signed by the party to be charged (that is, the one against whom it is sought to enforce the contract) or by his authorized agent:

(1) The promise of an executor or administrator to pay out of his own estate that which is due from the estate he is administering;

(2) The promise to answer for the debt, default, or miscarriage of another, that is, to be surety that another will pay his debts or discharge any of his legal obligations.

(3) The promise to do anything, as transfer property, in consideration of marriage, that is, where the marriage is the consideration for such promise;

(4) Any contract or sale of lands, or any interest in or concerning lands (though in the United States generally leases for less than one year are excepted);

(5) Any contract which by its terms is not to be performed within the space of one year from the time of the making thereof; but if it may be fully performed within one year it does not require a writing.

It must be observed, says Prof. Huffcutt in his "Elements of Business Law," that this requirement is in addition to all other requirements. All contracts require a true agreement, competent parties, and consideration. These contracts require all those things and also a writing duly signed. Most contracts may be proved by

parol evidence; these contracts may be proved only by a writing. The writing may be a mere memorandum stating the chief points in the agreement, or it may even consist of a series of letters, telegrams, or entries in account books, so connected as to make together a complete memorandum. Careful persons will make a full memorandum, being particular to name the parties, the subject-matter, the consideration, the terms and conditions, and to have this memorandum signed by both parties to the contract. If the writing fails to state any essential term, it is unenforceable, for that term would have to be proved by parol evidence, and the statute forbids this.

In many states additional contracts requiring a writing are enumerated, as, for example, a promise to pay a debt discharged in bankruptcy, a promise to pay a debt barred by the Statute of Limitations, a promise after arriving at majority to pay a debt contracted during infancy, the acceptance of a bill of exchange, a fire insurance policy, a limited partnership, a common law marriage, and many others. Whether a particular contract must be in writing in a given state can be ascertained only after a careful examination of the statutes of that state.

Seventeenth section. The seventeenth section of the Statute of Frauds provides that a contract for the sale of goods, wares and merchandise (that is, any personal property) of the value of ten pounds or upwards shall be unenforceable unless the buyer accepts part of the goods so sold and actually receives the same, or gives something in earnest to bind the bargain or in part payment, or there be a note or memorandum in writing

signed by the party to be charged or by his authorized agent.

It will be observed that a contract to sell land can be evidenced in only one way, namely, by a writing, while a contract to sell goods of the value of $50 or more may be evidenced in any one of three ways, namely, by a receipt of the goods or a part of them, by a part payment of the price or payment of "earnest money," and by a writing. States differ as to the value below which no special form is required under the seventeenth section. Some fix it as low as $30, and some as high as $200. Several states do not have this portion of the statute at all. It is not found in Alabama, Arizona, Delaware, Illinois, Kansas, Kentucky, Louisiana, New Mexico, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia, West Virginia.

In these states a contract to sell goods, no matter of what value, may be proved by parol although there has been neither delivery nor payment. It is generally thought that the statute as to the sale of goods has outlived its usefulness and should be everywhere repealed as an unnecessary restraint upon commerce.

In the following states and territory the sum is fixed at $30: Arkansas, Indian Territory, Maine, Missouri, New Jersey.

In the following it is fixed at $33: New Hampshire.

In the following it is fixed at $40: Vermont.

In the following it is fixed at $50: Alaska, Colorado, Connecticut, District of Columbia, Georgia, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New York, North Dakota,

Oklahoma, Oregon, South Carolina, South Dakota, Washington, Wisconsin, Wyoming.

In the following it is fixed at $200: California, Idaho, Montana, Utah.

In the following a contract for the sale of goods of any value, however small, must conform to the statute: Florida, Iowa.

It is difficult at times to say whether a sale is of real property or of personalty. The sale of standing trees to be cut by the buyer is generally held to be a sale of realty; but if the seller is to cut them, the contract contemplates that they shall be personal property when delivered to the buyer. Growing annual crops, known as emblements, are considered personalty, while fruits, grass, and other perennials are held to be in the same class as trees.

Parties to a Contract.

In general any person of legal age and sound mind is capable of making a binding contract, but no person can contract with himself in a different capacity, as there must be an agreement of minds.

Parties must be capable of contracting at the time they enter into the undertaking, for without capacity to contract there can be no assent and no understanding. Therefore, before a party can bind himself to a contract he must be able to understand its nature. Where one of the parties is mentally incapable of contracting, the contract is void.

Besides being capable, parties to a contract must actually exist. If natural persons, they must be living. If artificial persons, as corporations, they must have a legal existence in order to contract.

Incompetent parties.—Persons incompetent to contract have been usually stated to be: (1) Alien enemies; (2) infants; (3) insane persons and habitual drunkards; (4) married women; (5) corporations. But as to all of these classes, except the first, there are qualifying circumstances, and particularly as to married women and corporations, the possession of the capacity to contract is the rule and not the exception.

Aliens.—Aliens may be either alien enemies or alien friends. An *alien friend* is one whose country (that to which he owes allegiance) is at peace with our country. As a general rule an alien friend can enter into contracts, engage in trade, purchase and sell personal property, and sue and be sued, as if he were a citizen of the country wherein he resides. In some states resident aliens are by statute placed on the same footing as natural-born citizens in these respects, and in some states the same statutory rights are enjoyed by non-resident alien friends.

Alien enemies are subjects of a country with which our country is at war, and are generally incompetent to contract. Contracts made with an alien enemy are void. All commercial intercourse and traffic is suspended, except so far as may be allowed by the sovereign authority. The reason is, that if commercial traffic were permitted, a diversity of interests might arise between a government and its subjects. It might be to the interest of manufacturers, for example, to prolong hostilities in order to make money. The chief exceptions to the rule that alien enemies are incompetent to contract are found in contracts for ransom, etc.

An agent for an alien enemy may contract for the payment of debts due the enemy where such agent re-

sides in the same state with the debtor, provided the funds be not transmitted to the alien enemy during the continuance of the war. An alien enemy may sue and defend suit, but may not prosecute a suit in court.

Infants.—In the eye of the law all who have not reached the age of majority—all minors—are infants. By the common law, majority for both sexes was twenty-one years. It is not presumed that the arrival of a person at the age of twenty-one years effects any great change in his mental capacity, but it is recognized that young persons are not always capable of judging for themselves in the common affairs of life, and some period must therefore be fixed which may be said to be the age at which people generally arrive at the age of discretion. Twenty-one has been thought to come nearest to applying to all cases, and has accordingly been adopted in this country as the age of majority. The statutes of a few states have changed this in the case of females so that they become of age at eighteen or at marriage.

The minor becomes of age on the day preceding his twenty-first birthday. Since an infant is not presumed capable of attending to business affairs, his contracts are generally not binding upon him; that is, they are voidable at his option. But an infant is liable for the reasonable value of necessaries furnished him.

It is the privilege of an infant, at majority, to ratify contracts made by him during minority. An adult with whom an infant contracts is bound, even though the infant may not be.

The necessaries for which an infant may contract are not confined to such articles as are necessary to support

life, but extend to articles fit to maintain the particular person in his proper state, degree, and station of life. Included usually in such necessaries are victuals, clothing, medical attendance, and profitable instruction.

In a contract for necessaries, the vendor contracts with an infant at his peril. Upon him is the burden of proving the actual necessities of the infant, and it becomes his duty to acquaint himself with the infant's circumstances.

If the infant reside with his father or guardian, who cares for him and is willing to supply his wants, he cannot bind himself in contract even for what would otherwise be necessaries.

If a minor be married, the necessaries of his wife and children are considered necessaries for him.

An infant cannot bind himself in a contract for goods furnished him as a merchant or trader, even though the goods be actually beneficial, because in law an infant is not considered competent to carry on business on his own account.

An infant attains his majority on the day preceding his 21st birthday. If his birthday falls on December 27, he can make binding contracts on December 26.

Insane persons.—A person permanently or temporarily insane, is not bound by contracts made during his insanity, with the exception of contracts for the necessaries of life for himself and family. The insane person, or his guardian, must retract his contracts during his lifetime, or they will stand.

Drunkards.—A contract made by a person in a state of intoxication is generally not binding upon him. The person seeking to avoid a contract on the ground of in-

toxication must show that, at the time the contract was made, he was so intoxicated as to be deprived of the use of reason. Partial intoxication is not sufficient, though it will frequently be evidence of fraud, and may lead to the avoidance of the contract on that ground.

A person wishing to escape from the terms of a contract on the ground of intoxication, must rescind the contract within a reasonable time after becoming sober.

Where a person has become intoxicated for the purpose of practising fraud by entering into a contract afterwards to be avoided, the law will not allow him to take advantage of his intoxication.

In some states provision is made that in case a person habitually becomes intoxicated, he can be tried in the same way as a person who is supposed to be insane, and declared an habitual drunkard. Where this is done, a guardian is appointed, and after that all contracts made by the drunkard without the consent of the guardian are void, whether at the time of making them he was actually intoxicated or not.

Married women.—At common law married women were incapable of making any binding contracts. Neither the married woman nor the other party to the contract was bound; the contract was absolutely void. She could bind her husband, not herself, upon a contract for necessaries.

This common law disability has been largely removed by statutes. These vary in the different states, but in general a married woman now may contract as fully as an unmarried woman, except that a married woman cannot, in some states, contract with her husband or as surety for her husband.

In the following states and territories a married woman owns her separate property and can make contracts concerning it the same as if unmarried: Arizona, Arkansas, California, Colorado, North Dakota, South Dakota, Delaware, District of Columbia, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, South Carolina, Utah, Virginia, Washington, Wisconsin, Wyoming; in Vermont if she is engaged in separate business; in Alabama with her husband's consent in writing. In several of these states some qualifications of this rule will be found which must be determined by reference to the statutes. [Huffcutt.]

Where the statutes secure to married women separate rights in property and enable them to enter into transactions in relation thereto, a married woman may use her separate property for purposes of trade or business, which includes mechanical, manufacturing, or commercial pursuits; and the right implies the right to purchase goods and to bind herself by contract to pay therefor.

Corporations.—A *Corporation* is an association of people, its stockholders, chartered by the legislature to act as a new and distinct legal person for the transaction of a specified business.

A corporation can own property and make any contract relating directly or indirectly to the business for which its charter was granted. But any contract made outside its chartered powers cannot be enforced either by the corporation, or by the other party to the contract.

A stockholder may appeal to a court of equity to prevent a corporation from performing such a contract. For example, a railroad company could not be enforced to pay $5,000, which it had agreed to pay the manager of an exposition in case of a deficit; such a contract was considered outside the purpose for which its charter was given, although the holding of the exposition in a certain town brought the railroad an increase of passengers.

The contractual powers possessed by corporations have been thus stated:

(1) Such powers to contract as are conferred by their charters.

(2) By implication of law, without any affirmative expression in their charters or governing statutes, and in the absence of express prohibitions, they have the same power to make and take contracts, within the scope of the purposes of their creation, that natural persons have.

(3) The power is restricted to the purposes for which the corporation has been created, and cannot be lawfully exercised by it for any other purpose.

The charter of a corporation being the measure of its powers, all contracts made by a corporation beyond the scope of those powers (called *ultra vires*) are unlawful and void, and no action can be maintained upon them in the courts.

The manner of making a contract by a corporation is the same as that by a natural person, if no express requirements in its charter, or the statutes applicable to corporations, are provided.

An old common-law rule was that a corporation could act only by deed, or power in writing under its seal. But in the United States the rule is that parol contracts made

by the authorized agents of a corporation, acting within the scope of its prescribed purposes, are express promises of the corporation, and all duties imposed on them by law and all benefits conferred at their request raise implied promises, for the enforcement of which an action may lie.

The acts of agents, within the scope of their authority, bind the corporation, unless the charter expressly provides otherwise; but agents may lawfully make only such contracts as their companies may make. Their powers cannot exceed the powers of the corporation itself.

The corporate seal of a corporation is not required to be affixed to contracts made within the ordinary business of the corporation. Except where a seal would be required in the case of individuals, and except where the charter requires it, a corporation's acts need not be evidenced by its corporate seal.

Consideration.

Definition.—The consideration of a contract is defined as "the reason which moves a contracting party to enter into an agreement; the material cause of a contract; the price or motive of a stipulation."

In all contracts each party gives something in exchange for what he receives. The consideration is therefore that act or forbearance of the one party which is given in exchange for the promise of the other.

Consideration does not mean necessarily that one party is profited thereby; it may consist in some detriment to or the giving up of some legal right by the other party. A total want of consideration renders the alleged contract null and void.

Except in the case of sealed contracts (and even as to these in many states of the Union) every promise contained in a contract must rest upon a sufficient consideration in order to be enforceable at law.

There must be something mutual given in exchange, or some inducement, and it must be something lawful and competent in value to sustain the assumption.

A contract not under seal is called a simple contract. A sealed contract is often called a specialty or a deed; or it may be a bond.

Consideration consists in some legal loss or detriment suffered by the party to whom the promise is made, such as the payment of money, or the giving of some article of value, or services rendered; or a promise to do some such thing in the future.

Gratuitous promises are not enforceable. A mere moral obligation to do a thing is not a legal consideration for a promise to do it.

Every contract *must* have a consideration to make it binding. But it is a principle of the common law that a contract under seal (called a specialty) requires no consideration to support it. The formality of affixing a seal to the signature has been held to be "conclusive evidence that there was a sufficient consideration for the contract."

This, however, is somewhat misleading and a sealed instrument, without consideration, does not really stand for all purposes on the same footing as an instrument for which value has passed.

It is essential to specific performance that the consideration be valuable and actual; a merely good considera-

tion, or a consideration such as that imported by a seal to a bond, is not sufficient.

A contract under seal is regarded at common law as of higher nature than a simple contract—one depending upon the presence of a consideration, but in some of the States, the distinction between sealed and unsealed instruments has been abolished, and in other jurisdictions the seal merely affords a presumption of a consideration capable of being rebutted by proof that the parties intended a consideration.

Express or Implied.—The consideration may be expressly stated in the terms of a contract; or it may be implied, as in the case of a sealed instrument, or in the words "value received" of a promissory note or bill of exchange.

Sufficiency of Consideration.

The consideration for a promise, says Weed, must be something which the party promising could not legally claim before. For example, if A owed B money, and B agreed to give A a horse if he would pay him, B would not be bound to give the horse to A on payment of the money; B's promise to give the horse was without consideration, for A owed him the money anyway.

The consideration must be *legal.* See Legality of Contracts, *infra.*

A *past consideration* will not, as a rule, support a promise; that is, a consideration performed or finished by the promise without request and before any promise is given by the promisor. A subsequent promise, after the performance of the act, by way of compensation or reward for the same, would be unenforceable at law.

Good and Valuable Considerations.

At common law considerations are distinguished as *good* and *valuable*.

A *good* consideration is one founded on blood or natural love and affection. This is sufficient in a deed against all persons but creditors and bona-fide purchasers, but not to support a simple executory contract.

A *valuable* consideration consists either in some right, interest, or profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility suffered or undertaken by the other. Thus, a sum of money paid, services rendered, the use of property, or a bare waiver of legal rights constitutes a valuable consideration sufficient to support a contract. Marriage is a valuable consideration; also, a compromise of doubtful rights, or a forbearance to enforce a legal claim.

Mutual promises, or a promise for a promise, are sufficient considerations, if they be mutually binding. But the performance of an act which a party is under legal obligation to perform, as the promise to pay a debt for which the promisor is already bound, cannot constitute a consideration.

In negotiable instruments the law presumes consideration, but the promisor may show that none in fact exists.

A promise to do that which is in its nature impossible of performance at the time it is made is invalid.

The consideration need not equal the promise in value. If, however, there be *some* valuable consideration for the contract, it makes no difference how inadequate it may be, unless the inadequacy be so gross as to show, with other facts and circumstances, fraud or oppression in securing the consent to the contract.

The Need of a Consideration.

Parsons says in his "Laws of Business"; "It is an ancient and well-established rule of the common law prevailing in this country, that no promise can be enforced at law unless it rests upon a *consideration;* by which word is meant a cause or reason for the promise. If it do not, it is called a *naked bargain,* and the promisor, even if he admits his promise, is under no legal obligation to perform a promise that he made without a *consideration.*

"There are two exceptions to this rule. One is when the promise is made by a sealed instrument, or deed (every written instrument which is sealed is a deed). Here the law is said to *imply* a consideration; the meaning of which is that it does not require that any consideration should be proved. The seal itself is said to be a consideration, or to import a consideration. [See *supra.*]

"The second exception relates to negotiable paper; and is an instance in which the law-merchant has materially qualified the common law.

"The word *consideration,* as it is used in this rule, has a peculiar and technical meaning. It denotes some *substantial* cause for the promise. This cause must be one of two things; either a benefit to the promisor, or else an injury or loss to the promisee sustained by him at the instance and request of the promisor. Thus, if A promises B to pay him a thousand dollars in three months, and even promises this in writing, the promise is worthless in law, if A makes it as a merely voluntary promise, without a consideration. But if B, or anybody for him, gives to A to-day a thousand dollars

in goods or money, and this was the ground and cause of the promise, then it is enforceable. And if A got nothing for his promise, but B, at the request of A, gave the same goods or money to C, this would be an equally good consideration, and the promise to pay B would be equally valid in law.

"This requirement of a consideration sometimes operates harshly and unjustly, and permits promisors to break their word under circumstances calling strongly for its fulfillment. Courts have been led, perhaps, by this, to say that the consideration is sufficient if it be a substantial one, although it be not an adequate one. This is the unquestionable rule now, and it is sometimes carried very far. In one case an American court refused to inquire into the *adequacy* of the consideration,—or whether it was *equal* to the promise *made* upon it,—and said, if there was the *smallest spark* of consideration, it was enough, if the contract was fairly made with a full understanding of all the material facts. Still, there must be some consideration."

Offers Made on Time.

It sometimes happens that one party makes another a certain offer, and gives him a certain time in which he may accept it. The law on this subject was once somewhat uncertain, but may now be considered as settled. It is this: If A makes an offer to B, which B at once accepts, there is a bargain. But it is not necessary that the acceptance should follow the offer instantaneously. B may take time to consider, and although A may expressly withdraw his offer at any time before acceptance, yet if he does not do so, B may accept within a

reasonable time; and if this is done, A cannot say: "I have changed my mind."

What is a reasonable time must depend upon the circumstances of each case. If A when he makes the offer says to B that he may have a certain time wherein to accept it, and is paid by B for thus giving him time, he cannot withdraw the offer; or if he withdraws it, for this breach of his contract the other party, B, may have his action for damages. If A is not paid for giving the time, A may then withdraw the offer at once, or whenever he pleases, provided B has not previously accepted it.

But if B has accepted the offer before the time which was given expired, and before the offer was withdrawn, then A is bound, although he gave the time voluntarily and without consideration. For his offer is to be regarded as a continuing offer during all the time given, unless it be withdrawn.

A railroad company asked for the terms of certain land they thought they might wish to buy. The owner said in a letter, they might have it at a certain price, if they took it within thirty days. After some twenty-five days the railroad company wrote accepting the offer. The owner says, No, I have altered my mind; the land is worth more; and I have a right to withdraw my offer, because you paid me nothing for the time of thirty days allowed you. But the court held that he was bound, because this was an offer continued through the thirty days, unless withdrawn. They said that the writing when made was without consideration, and did not therefore form a contract. It was then but an offer to contract, and the party making the offer most un-

doubtedly might have withdrawn it at any time before acceptance. But when the offer was accepted, the minds of the parties met, and the contract was complete, and no withdrawal could then be made.—*Parsons.*

Legality of Object.

As a rule, parties may agree to do or not to do whatever they please. But to make a valid contract it is necessary that its object shall be *legal.*

Contracts are made illegal by statute. Any agreement the subject-matter of which the law declares illegal is unenforceable and void.

Where, however, the agreement contains separate promises, by which a party is bound to do certain acts, some of which are illegal and others legal, the legal promises so severable, if supported by a sufficient consideration, may be enforced.

The statutes may declare certain contracts to be illegal, or may prohibit or simply penalize them.

Illegal Contracts.—Contracts declared by statute to be illegal include gambling or wagering contracts, contracts for usury, dealing in futures, Sunday labor, etc.

Acts Prohibited by Statute.—A contract to perform an act prohibited by statute or involving such an act would be illegal; thus the statute prohibiting prizefighting, a contract to engage in a prizefight would be unenforceable.

Acts Penalized by Statute.—In the case of certain acts which are penalized by statute but not expressly prohibited, it is a question of construction whether con-

tracts to do such acts are illegal. The following examples are cited by Prof. Huffcutt:

1.—"The statute provides that any one who sells a lot in a plat in any city without first recording the plat in the appropriate public office shall pay a penalty of $50 for each offense. A sells B a lot in an unrecorded plat. B afterwards refuses to take the lot and pay the purchase price. Is the contract of sale of this lot an illegal contract? It has been held not, because the court thought it was not the object of the statute to prohibit such sales but merely to make it so expensive to deal in lots in unrecorded plats that landowners would be induced to record the plats.

2.—"The statute fixes a penalty for the sale of adulterated foods. B sells to C a quantity of adulterated foods. C is not bound. He may refuse to take the goods and pay the price on the ground that B's contract is illegal. The intent of the statute is to prevent the sale of adulterated goods."

Generally speaking, illegal contracts are such as are (1) contrary to law; (2) contrary to morality; and (3) contrary to public policy.

The first class includes agreements to perform acts contrary to the rules of the common law or of a specific statute, or constitutional enactment. Such would be an agreement to commit a crime.

Agreements founded on considerations that are against sound morals are void. Examples of this are obvious enough, as contracts for printing immoral books, or to facilitate the procuring of a divorce, etc.

Agreements that are illegal because contrary to public policy include contracts to appoint a person to pub-

lic office, to pay a public officer more than a lawful compensation, or for the corruption of public officers or interference with the administration of public justice.

Other contracts are void because they are against public policy affecting individual action, as contracts in restraint of marriage.

Wagering Contracts.—A wagering contract is an agreement to pay money or transfer property upon the determination of an uncertain event. The consideration for such a contract may be either a like promise or something given outright. By the common law of England wagering contracts were not illegal, and even in early New York practice wagers were held to be legal. The courts of Massachusetts refused to follow the English rule and held wagering contracts to be illegal. They are now generally declared by statute to be illegal in all jurisdictions.

Wagering on the rise and fall of prices of grain or stocks, etc., for future delivery where there is no intention on either side to make an actual delivery, and both parties intend to settle on the delivery day the difference between the contract price and the market price in money, is an illegal contract. It is equivalent to betting that the market price on a certain day will be so much and the rule is that whenever the intent is merely to settle the gain or loss in money, and without intent to deliver or receive the article itself, the transaction is a gambling contract and illegal.

Insurance contracts were formerly a favorite form of wagering contract. Insurance was taken upon lives or vessels, etc., in which the policyholder had no interest. This is now generally made illegal by statute. In order

that an insurance policy may be legal, the person insured must have some insurable interest in the property or the life covered by the policy.

Effect of Illegality.—In most cases the law gives no relief to either party to an illegal contract. It will neither enforce the contract nor allow either party to recover anything paid or advanced under it, but the courts may aid the party to get back what he has paid, provided he is innocent of an illegal intent, or provided his recovery of the money would prevent the illegal transaction from being carried out. While gambling contracts are generally illegal, statutes often provide that money paid on a gambling contract may be recovered.

Where a marriage broker induced an ignorant immigrant woman to pay him money to secure a husband for her, the court held that she was comparatively innocent of illegal intent, and permitted her to recover the money from the broker.

Restraint of Trade.—Contracts in general restraint of trade are also void, although agreements in partial restraint of trade are held valid, if supported by a sufficient consideration. What is a partial restraint of trade within reasonable limits depends on the circumstances of each case. For example, an agreement by A with B that A shall never carry on the grocery business at any place is void; but if the contract be that A shall not engage in such business within the town of X, it is valid.

Considerations tending to create a monopoly of any particular commodity are in restraint of trade, and therefore void. Likewise, combinations between par-

ties not to bid at public sales, in order to stifle competition and obtain property for less than it would otherwise bring, are illegal and void.

Sunday Contracts.—Statutes, generally, in the United States and England, declare Sunday contracts illegal, works of charity and necessity excepted. If a deed or a note be executed and delivered on Sunday, it is void; but, if not delivered until a secular day, it is valid.

Interpretation or Construction.

The interpretation or construction of a contract is the manner in which its terms are construed, or in which the courts deal with the contract when it comes before them in litigation. Many of the difficulties that lead to litigation may be avoided by business men in making contracts if they understand something of the mode in which the courts deal with them. They should know how the existence and terms of a contract are proved, and if in writing, how far they may be modified by parol or verbal evidence; and there are well-defined rules and precedents followed by the courts in construing the contract when its terms are proved. Some of these rules are of interest only to lawyers; others directly concern business men and should be known by them.

Intent.—Generally speaking, the terms of a contract are construed so far as possible so as to carry out the evident intent of the parties. For this purpose words should be given their natural meanings, and local business customs or usages may be relied upon under certain restrictions to explain phrases or conditions of the agreement of seeming obscurity, but not to alter any of the terms.

Where a man makes a contract by word of mouth, he will not be allowed to say that he did not mean what he said. The law imputes to a person an intention corresponding to the rational and honest meaning of his words, and of his actions as well, and where the conduct of a person toward another, judged by a reasonable standard, manifests an intention to agree in regard to some matter, that agreement is established in law as a fact by proof of such conduct, whatever may have been the real but unexpected state of his mind on the matter.

This principle also applies to contracts in writing. Where the parties have put into writing any portion of the terms of their agreement, they cannot alter by parol evidence that which is written.

And where a written contract purports to be the whole of the agreement, it can neither be added to nor varied by parol evidence of unexpressed intention, for where the parties deliberately put their engagements in writing in such terms as import a legal obligation, without any uncertainty as to the object or extent of their engagement, all previous negotiations and agreements with reference to the subject-matter are presumed to have been merged in the written contract.—Clark on Contracts.

When Evidence is Admitted.—But evidence will be received to show fraud, duress, mistake, or a condition precedent to the validity of the contract, or to explain abbreviations or obscure words, or to show a subsequent contract modifying the first. A *condition precedent* in law, according to Blackstone, is a condition which

must happen or be performed before an estate or some right can vest and on failure of which the estate or right is defeated.

When the writing is merely a memorandum and does not contain the full terms of the contract, oral evidence may be admitted to show the whole contract.

Place of the Contract.—If a contract calls for its performance in any particular place or locality, the law and usage of that place or locality are to be followed in construing it; but, if it is not to be performed in any particular place or locality, then the law and usage of the place where it is made will govern.

General Rule of Construction.—Generally speaking, the words of a contract are to be understood in their plain and literal meaning, and the contract is to be so construed as to carry out the intention of the parties. The whole writing is to be construed together, and where clauses are inconsistent, meaningless clauses or those at variance with the manifest intention of the contract will be rejected. Where a contract is partly printed and partly written, the written part will be accepted in preference to the printed part, if they be inconsistent.

Assignment of Contracts.

The assignment of a contract is the transfer or making over to another of the rights under said contract by the party originally entitled thereto. Under certain circumstances a person not a party to a contract may take the place of one of the parties either by the voluntary act of the parties or by operation of law.

Such a substitution of parties, or assignment of the contract, was not permitted at common law but is now

allowed, and by statute, in some states, the assignee may sue on the contract in his own name.

Assignment of Liabilities.—The general rule is that a party to a contract can not assign his liabilities under it without the consent of the other party. But when a contract is assigned with the consent of the other party, there is practically a new contract substituted for the original contract. Thus a person who has agreed to perform labor involving no personal skill or qualifications of a personal character may have the work performed by another, but he himself is liable if the work is not properly done.

A contract involving personal qualifications or skill, as a contract between an author and a publisher, may not be assigned.

Assignment of Rights.—The rights acquired under a contract may be assigned if they relate to money or properties, but one can not assign a right to some personal service.

At common law the rights arising out of a contract can not be assigned so as to entitle the assignee to sue on it, unless such an assignment is made by an agreement between the original parties and the intended assignee. This agreement is subject to all the rules for the formation of a valid contract, and is in effect a substituted agreement known to the law as a *novation.*

In most states at the present time there are statutes allowing assignment of choses in action, or rights under contracts, and a suit of law in the name of the assignee, in the same manner as such assignment might formerly have been made and suit brought in equity, and subject to the same rules, as they are above stated.

In equity the rights under a contract may be assigned, without the consent of the other party, whenever the contract is not for exclusively personal services, and does not involve personal credit, trust, and confidence. But in such case notice of the assignment is necessary to bind the debtor or person liable, and the assignee takes subject to all defenses which would have prevailed against the assignor.—Clark on Contracts.

Assignment of Claims.—The assignee of a claim obtains only the rights of the assignor, from whom he bought the claim, and the claim is subject to all the defenses that would have prevented a recovery by the assignor. It is immaterial whether or not the assignee knew of such defenses.

An assignment of a claim does not bind the debtor until he has notice of it, and the debtor is protected in a payment made in good faith to the original holder of the claim before he had notice of the transfer. But when the debtor is notified, he is bound to respect the rights of the assignee.

In the absence of statute, an assignment need not be in any particular form so long as the intention to assign is manifest, and it is supported by a good consideration.

Negotiable Contracts.

Contracts contained in written instruments that are negotiable, such as bills of exchange, promissory notes, and checks, may be transferred from hand to hand so that each new holder may recover upon them in his own name.

This is the transfer of a contract by *negotiation* rather than by an assignment, and is more fully discussed under the head of Negotiable Instruments.

Discharge of Contracts.

Definition.—By discharge of contract we mean the manner in which a contract may be discharged and the parties freed from their rights and liabilities under it. The various methods of discharge are as follows: (1) By agreement; (2) by performance; (3) by breach; (4) by impossibility of performance; and (5) by operation of law.

Discharge by Agreement.—When a contract is executory, that is, when the thing agreed upon has not been done, and neither party has performed his part, parties may annul the contract by mutual agreement. When, however, the contract has been executed on one side, that is, when one of the parties has performed his part, it can only be discharged by a formal release under seal, or by an *accord and satisfaction.*

An accord is an agreement by which one of the parties agrees to accept a substitute for that which has been promised. Such an agreement being executed is called an accord and satisfaction, and bars suit.

Clark says: "A discharge by agreement takes place in the following cases: (1) Where there is a waiver, cancellation, or rescission of the contract; (2) where a new contract is substituted for the old one; (3) on the happening of a condition subsequent, expressed or implied in the contract. Such an agreement must, as a rule, possess all the elements necessary to the formation of any other valid agreement."

An existing contract may also be discharged where the parties make a new agreement modifying the terms of the former contract, or the contract itself may contain a clause for its discharge upon the happening of a certain contingency.

Discharge by Performance.—Where the parties to the contract have performed what they have promised in accordance with the terms of the contract, the contract is discharged or executed. To discharge a contract, the agreements therein need not be literally but must be substantially performed. They should be performed within the time or at the time fixed by the agreement. If no time is fixed, then the contract should be performed within *a reasonable time.*

This is a matter which depends entirely on the nature of the contract. If a contract is to be performed by a certain day, which happens to be Sunday, the time is extended until the next day.

The discharge of an agreement to pay money is made by payment of the amount agreed upon in legal tender money.

The receipt by a creditor from a debtor of the bill or promissory note of a third party in payment of his claim will operate as a discharge, but the acceptance of the debtor's own bill or note merely suspends the right of action on the original claim until the maturity of the paper.

A tender of money to be legally good must be of the exact amount due, and in legal tender money.

In payment of private debts, gold coin, silver dollars, United States notes, or greenbacks, and United States Treasury notes are legal tender to any amount. Frac-

tional silver coins are legal tender to the amount of $10.00, and copper coins to the amount of 25c. Gold and silver certificates and national bank notes are not legal tender money, but are generally received in payment of private debts.

Tender is an attempted performance of a contract. If it is accepted, it discharges the party making the tender. If it is refused, it discharges him unless the contract is for the payment of money, in which case he is still liable on his debt but may plead the tender against a claim for interest or the costs of an action. The exact amount of the debt must be produced, as aforesaid, and to stop interest and costs, the tender must be kept good.

A tender of a check or note of a debtor need not be accepted in place of money. If it is accepted, it is regarded in most jurisdictions as merely a conditional payment, unless otherwise expressly stipulated. If the check or note is not paid, the creditor can either sue upon it or, by returning it, sue upon the original claim.

Discharge by Breach.—Breach of contract occurs when a party breaks through any obligation which it imposes upon him and always gives the injured party a right of action f r damages, though it does not always discharge the c ntract.

Where the contract is an indivisible one, that is, where the promises on each side are mutually dependent, a breach of performance by one party will discharge the other from performance, and give the latter ground for action for damages against the party in default. If, prior to the time fixed for performance, one party positively asserts that he will not perform his promise, this

is an anticipatory breach and gives the injured party a right of action.

Thus, suppose A agrees to sell a boat to B for $500. A subsequently refuses to deliver the boat and receive the purchase price. B is then discharged from obligation. He need not receive the boat should A afterwards tender it, nor is he bound to pay anything to A, and he has a right of action for damages against A for his refusal to deliver when performance was due.

On the other hand, if the contract is a divisible one containing independent promises and consisting therefore, in reality, of a series of contracts, the breach of one part of the contract will not discharge the other parts. There is often difficulty, however, in determining the nature of a contract—whether it is divisible or indivisible.

While a failure of performance by one of the parties operates as a discharge to the other, this must be a failure to perform some vital promise of the contract and not merely a subsidiary promise.

Discharge by Impossibility of Performance.—Where one of the parties to a contract prevents the other from performing his part or acts so as to render the contract impossible of performance, the injured party is discharged from liability and has the right of action for damages.

A party to a contract is also discharged where impossibility of performance is created by law, as by a statute or by an injunction from the court; also where the subject-matter is destroyed, the rule being that where the continued existence of a specific thing is essential to

the performance of a contract, its destruction through no fault of either party operates as a discharge.

A contract for personal services is discharged by the death or incapacitating illness of the party under obligation to render the services.

Discharge by Operation of Law.—A contract may be discharged by operation of law where a rule of law operates upon certain circumstances, as in the following cases:

(1) In case of a "merger" where a higher security is accepted in the place of a lower,—the subject-matter and parties being the same,—as where a contract under seal is accepted in the place of a simple contract, where the higher security merges or extinguishes the lower.

(2) Where a deed, "specialty," or contract in writing is materially altered by addition or erasure by or with the consent of one party to the contract without the consent of the other.

(3) Where there is an adjudication in bankruptcy of one of the parties to the contract. Under the bankruptcy law a bankrupt is thus released from debts and liabilities provable against him.

Remedies for Breach of Contract.

Where there is a breach of contract by one of the parties thereto, the following rights are acquired or may be acquired by the other party:

(a) He may be discharged from further performance.

(b) If he has performed his part or partly performed it, he has a right of action to recover therefor, this being a cause of action distinct from that arising

out of the original contract, and based upon a contract created by law—a *quasi* or *constructive* contract. The obligation created is not a contract in any proper sense, because it is imposed by the law without agreement, but the law regards it as a sort of implied contract for the purpose of allowing recovery thereon in an action of assumpsit, which is the form used for recovery on real contracts.

(c) He acquires a right of action on the original contract or the part of the contract broken, and may maintain an action to recover damages for the loss sustained by the breach, or in some cases, a suit in equity to compel specific performance of the contract by the other party.

The right of action arising from a breach of contract can only be discharged by consent of the parties, by the judgment of a competent court, or by lapse of time under a statute of limitations.—Clark.

How to Make a Contract.

In drawing up a contract, the main object should be to express the exact agreement of the parties in plain and unmistakable language, so as to avoid the danger of future misunderstanding of its terms. When a contract is placed in writing, the exact terms of the written instrument are upheld by the courts and can not, as a general rule, be varied by oral evidence. It is essential therefore to remember this fact when the contract is written and signed.

All the terms of the agreement should be plainly written, and both parties should agree to each promise in every respect before passing on to another. Nothing

should be left to a verbal agreement, outside the terms of the written instrument. To do so is unwise and a common cause of disagreement and litigation.

A short general form of contract which may be used in a great many cases will be found among the legal forms in another part of this volume. Care should be taken in filling in the terms so as to express only what is agreed upon and nothing more. The simpler the language the better, because less liable to misunderstanding. If the payment of money is involved, be careful that the time, place, and amounts of payment are clearly and distinctly specified, and that there is a perfect agreement between the parties on these points before the contract is signed.

If the signatures of the parties are to be witnessed, the phrase "Signed in the presence of" may be written at the left of the signatures of the parties to the contract, and the witness or witnesses may write their names beneath the phrase. A witness is useful to prove signatures in court, if necessary; otherwise the testimony of the other party, proof of handwriting, etc., are required.

Simple contracts require no seal. In fact the use of a seal is now, in most states, confined to bonds, deeds, and mortgages.

If the phrase "In witness whereof the parties to these presents have hereunto set their hands and seals," is used, a simple mark or scroll printed or made with a pen with the intention of calling it a seal, is all that is required in most states. A wafer or piece of colored or gilt paper attached to the document immediately after

the name of the person signing the same is also commonly used as a seal.

If a signature of a party is affixed by his agent, the form used should be "John Johnson, by George Smith, his Agent." The word *by* is essential. If omitted, the signature might make George Smith a party.

"Where law ends, tyranny begins."

—William Pitt.

"The law is the last result of human wisdom acting on human experience for the benefit of the public."

—Dr. Samuel Johnson.

CHAPTER III.

SALES.

Definitions, etc.—A sale of personal property is the transfer of its general ownership from one person to another for a price in money. It is almost always the result of a contract between the seller and the buyer.

A sale is also well defined as an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the price. In its legal nature it is a contract made for the transfer of property.

If the contract provides for the transfer of ownership at once the transaction is called "a present sale," or "a bargain and sale," or "an executed contract of sale."

If it provides for the transfer of ownership at some future time it is called "a contract to sell," or "an executory contract of sale."

"Buyer" or "vendee" means a person who buys or agrees to buy goods, or any legal successor in interest of such person.

"Seller" or "vendor" means a person who sells or agrees to sell goods, or any legal successor in interest of such person.

"Sale" includes a bargain and sale as well as a sale and delivery.

"Purchase" includes taking as a mortgagee or as a pledgee.

"Property."—The word property in law means the general property in goods and not merely a special property, or definite article or goods.

"Delivery" means voluntary transfer of possession from one person to another.

"Future goods" means goods to be manufactured or acquired by the seller after the making of the contract of sale.

"Goods" include all chattels personal other than things in action and money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing claim, whether for money or not, constitutes value where goods or documents of title are taken either in satisfaction thereof or as security therefor.

Essentials of the Contract.

In a valid sale, there must be parties competent to contract, a sufficient consideration, a mutual and a real consent, and all the other elements necessary for the validity of any other contract.

Viewed as a contract, a sale transaction is subject to the principles of law set forth in the chapter on Contracts. In this chapter we shall deal chiefly with the application of those principles and with other legal rules which are peculiar to sales of personal property.

Examples of Sales, Etc.

The following examples of sales are cited by Prof. Huffcutt:

1. "I will sell you my horse for $100." "I accept." This is a sale. The title passes at once. If the horse

dies, the loss falls on the buyer, even though the horse had not yet been delivered.

2. "I will sell you my colt for $100 when he is a year old." "I accept." This is an agreement to sell. The title remains with the seller until the colt is a year old. It then passes to the buyer and the agreement to sell becomes a sale.

3. The colt dies before he is a year old, without fault of either party. The contract is discharged.

4. "I will sell you my horse for $100 and deliver him to you tomorrow at your farm, you to pay the money at that time." "I accept." This is an executed sale, that is, the title passes at once to the buyer; but it is still an executory contract, that is, each party has still something to do in the way of performance.

5. If, as above, the seller and the buyer agree, but the seller also agrees to shoe the horse before delivery, the title does not pass until the horse is shod. This is an executory sale and an executory contract.

Uniform Sales Act.

An act to make uniform the law of sales of goods in the United States was drafted in 1902-1903 by Prof. Samuel Williston of the Harvard Law School at the request of the Commissioners on Uniform State Laws in National Conference. Several subsequent drafts were made and at the meeting of the Conference in St. Paul, 1906, the final draft was adopted and recommended to the legislatures of the several states for passage. It has since been enacted by the legislatures of Arizona, Connecticut, Massachusetts, New Jersey, Ohio and Rhode Island, with good prospects that other states will follow.

Inasmuch as the provisions of this Uniform Sales Act practically codify the existing laws and represent the general tenor and spirit of the law of sales in America, many of the provisions are cited below as generally applicable to most of the states.

Formation of the Contract.

A contract to sell or a sale may be absolute or conditional. There may be a contract to sell or a sale between one part owner and another.

Capacity.—Capacity to buy and sell is regulated by the general law concerning capacity to contract and to transfer and acquire property. Generally only the owner of the goods or his agent can transfer a good title to them.

Form of the Contract or Sale.—Subject to the provisions of any statute in that behalf, a contract to sell or a sale may be made in writing either with or without seal or by word of mouth, or partly in writing and partly by word of mouth, or may be inferred from the conducet of the parties.

Statute of Frauds.—In the United States a provision corresponding to the 17th section of the Statute of Frauds [See Statute of Frauds in Chapter II] exists in all the states but Alabama, Arizona, Delaware, Illinois, Kentucky, Louisiana, New Mexico, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia and West Virginia.

Effect of the Statute of Frauds.—By the 17th section of the Statute of Frauds, "No contract for the sale of goods, wares or merchandise for the price of fifty dollars (this limit varies in different states) or upwards,

shall be allowed to be good, except the buyer shall accept part of the goods so sold and actually receive the same, or give something in part of payment, or that some note or memorandum in writing, of the bargain, be made and signed by the parties to be charged on such contract, or their agents thereunto lawfully authorized."

This or a similar law applies to executory contracts for sale and also to barter. It does not apply to contracts for manufacture.

"Goods, wares and merchandise" include stocks, promissory notes and bonds (except in New Hampshire, Indiana and Alabama), and annual crops, as well as the articles ordinarily referred to by these words.

If several articles of small value but in all amounting to fifty dollars (or whatever the limit may be) and over, are bought at the same time and as one transaction, the statute applies.

The memorandum must set forth the terms of the contract sufficiently to identify the thing to be sold, and which party is buyer and which seller; and must be at least signed by the party to be charged thereon.

In general the goods must be accepted and actually received, wholly or in part, by the buyer, to make an oral contract for a sale, under the Statute of Frauds, binding.

For example: A agreed orally to buy some hides of B, who set apart the required number at the doorway of his store ready to be called for by A; that night the store was burned; and the court allowed A to refuse to pay for the hides because he had not "accepted or actually received the same."

Acceptance and actual receipt, however, if only for a moment, is sufficient.

Unless the buyer is to have an opportunity to examine the goods, such acts of the seller as will pass the title ordinarily to the buyer will be an acceptance within the meaning of the statute.

It would also be an acceptance, if the buyer neglected for an unreasonable time to reject goods sent to him for inspection, or if he acted towards goods not actually received as though he was their owner (for instance, by selling them to another).

But an acceptance of a sample is not an acceptance within the meaning of the statute, unless it was accepted as a part of the whole bulk.

Where goods are in a warehouse, delivery of the warehouse receipt and a transfer on the books is a sufficient receipt within the statute. So, too, if goods are already in the buyer's hands. But so long as the seller retains his lien, there can be no receipt to satisfy the statute.

Giving any amount of money however small, in part payment, will take the whole contract out of the operation of the statute.—Burdick.

As many important states have no statute corresponding to this section of the Statute of Frauds, it is suggested by the Commissioners on Uniform State Laws that the limit should be placed at $500. In Ohio it is $2,500; in Connecticut $100.

Subject Matter of Contract.

Existing and Future Goods.—The goods which form the subject of a contract to sell may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract to sell, called "future goods."

There may be a contract to sell goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

Where the parties purport to effect a present sale of future goods, the agreement operates as a contract to sell the goods.

Undivided Shares.—There may be a contract to sell or a sale of an undivided share of goods. If the parties intend to effect a present sale, the buyer, by force of the agreement, becomes an owner in common with the owner or owners of the remaining shares.

Destruction of Goods Sold.—(1) Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have wholly perished at the time when the agreement is made, the agreement is void.

(2) Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have perished in part or wholly or in a material part so deteriorated in quality as to be substantially changed in character, the buyer may at his option treat the sale—

(a) As avoided, or

(b) As transferring the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the sale was indivisible, or to pay the agreed price for the goods in which the property passes if the sale was divisible.

Destruction of Goods Contracted to be Sold.—Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault on the part of the seller or the buyer, the goods wholly perish, the contract is thereby avoided.

(2) Where there is a contract to sell specific goods and subsequently, but before the risk passes to the buyer, without any fault of the seller or the buyer, part of the goods perish or the whole or a material part of the goods so deteriorate in quality as to be substantially changed in character, the buyer may at his option treat the contract—

(a) As avoided, or

(b) As binding the seller to transfer the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the contract was indivisible, or to pay the agreed price for so much of the goods as the seller, by the buyer's option, is bound to transfer if the contract was divisible.

The Price.

Definition and Ascertainment.—The price may be fixed by the contract, or may be left to be fixed in such manner as may be agreed, or it may be determined by the course of dealing between the parties.

The price may be made payable in any personal property.

Where the price is not determined in accordance with the foregoing provisions the buyer must pay *a reasonable price*. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

The rules of law applicable to barter are the same as those applicable to sale, hence the same rules apply whether there is or is not a money consideration, but different principles are often applicable where a bargain

concerns real estate; that is, where real estate constitutes the whole or part of the consideration for transferring or for promising to transfer the property in goods.

Conditional Sales.—In many sales the agreement is that the title to the goods is to vest in the buyer, or to be divested from the buyer and revest in the seller, upon the happening or not happening of some event.

The condition may be precedent, as in the case of sales upon the instalment plan, whereby the title remains in the seller until all the instalments are paid.

In such cases it is generally held that the seller may reclaim the goods from any purchaser from the buyer, although such purchaser have no notice of the conditional sale; but statutes in many states require such sales to be recorded as chattel mortgages to be valid against *bona-fide* purchasers.

Goods Sold on Trial.—In the case of goods sold on trial, it is understood that the title thereto is to remain in the seller until the trial is over. The prospective buyer is not responsible for their loss in the meantime unless it may be by his negligence.

But if the goods are received under the agreement that the buyer may return them if they prove unsatisfactory, the title passes immediately to the buyer, subject to being divested if, after a reasonable examination, he return the goods in the same condition in which they were received.

Sale at a Valuation.—(1) Where there is a contract to sell or a sale of goods at a price or on terms to be fixed by a third person, and such third person without fault of the seller or the buyer, cannot or does not fix the price or terms, the contract or the sale is thereby avoided; but

if the goods or any part thereof, have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(2) Where such third person is prevented from fixing the price or terms by fault of the seller or the buyer, the party not in fault may have such remedies against the party in fault as are allowed by statute.

Warranties.

A warranty is an assurance of some fact, coupled with an agreement, express or implied, to make the assurance good or pay for the deficiency.

Definition of Express Warranty.—Any affirmation of fact or any promise by the seller relating to the goods is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the goods, and if the buyer purchases the goods relying thereon.

No affirmation of the value of the goods, nor any statement purporting to be a statement of the seller's opinion only, is construed as a warranty.

Implied Warranties of Title.—In a contract to sell or a sale, unless a contrary intention appears, there is—

(1) An implied warranty on the part of the seller that in case of a sale he has a right to sell the goods, and that in case of a contract to sell he will have a right to sell the goods at the time when the property is to pass;

(2) An implied warranty that the buyer shall have and enjoy quiet possession of the goods as against any lawful claims existing at the time of the sale;

(3) An implied warranty that the goods shall be free at the time of the sale from any charge or incum-

brance in favor of any third person, not declared or known to the buyer before or at the time when the contract or sale is made.

(4) This does not, however, render liable a sheriff, auctioneer, mortgagee, or other person professing to sell by virtue of authority in fact or law goods in which a third person has a legal or equitable interest.

Implied Warranty in Sale by Description.—Where there is a contract to sell or a sale of goods by description, there is an implied warranty that the goods shall correspond with the description and if the contract or sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

Implied Warranties of Quality.—There is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract to sell or a sale, except as follows:

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose.

(2) Where the goods are bought by description from a seller who deals in goods of that description (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be of merchantable quality.

(3) If the buyer has examined the goods, there is no implied warranty as regards defects which such examination ought to have revealed.

(4) In the case of a contract to sell or a sale of a specified article under its patent or other trade name, there is no implied warranty as to its fitness for any particular purpose.

(5) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(6) An express warranty or condition does not negative a warranty or condition implied under this act unless inconsistent therewith.

Sale by Sample.

Implied Warranties in Sale by Sample.—In the case of a contract to sell or a sale by sample:

(a) There is an implied warranty that the bulk shall correspond with the sample in quality.

(b) There is generally an implied warranty that the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

(c) If the seller is a dealer in goods of that kind, there is an implied warranty that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample.

Transfer of Property.

General Rules.—When the buyer has complied with all the terms of the sale, it is the duty of the seller to make delivery of the goods.

In the absence of special agreement the seller is not bound to send or carry the goods to the buyer, but only to put them in condition for delivery.

If the time and place of delivery be specified, such terms must be strictly complied with.

Ordinarily, the seller must tender the exact quantity bargained for, and afford the buyer a reasonable opportunity to inspect the goods to ascertain the quantity and quality.

If the goods do not conform to the terms of the contract, the buyer must notify the seller within a reasonable time, and, where practicable, return the goods.

Property in Specific or Ascertained Goods Passes When Parties so Intend.—For the purpose of ascertaining the intention of the parties, regard is usually had to the terms of the contract, the conduct of the parties, usages of trade and the circumstances of the case.

Where there is a contract to sell unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained.

Where, in pursuance of a contract to sell, the seller delivers the goods to the buyer, or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to or holding for the buyer, he is presumed to have unconditionally appropriated the goods to the contract, except in cases where the seller has expressly reserved title to the property by the terms of the agreement. This presumption is applicable, although by the terms of the contract the buyer is to pay the price before receiving delivery of the goods, and the goods are marked with the words "collect on delivery" or their equivalents.

If the contract to sell requires the seller to deliver the goods to the buyer, or at a particular place, or to pay the freight or cost of transportation to the buyer, or to a particular place, the property does not pass until the goods have been delivered to the buyer or reached the place agreed upon.

Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the buyer or of his agent, but possession of the bill of lading is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods as against the buyer.

Sale by Auction.

In the case of sale by auction:—

(1) Where goods are put up for sale by auction in lots, each lot is the subject of a separate contract of sale.

(2) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made, any bidder may retract his bid; and the auctioneer may withdraw the goods from sale unless the auction has been announced to be without reserve.

(3) A right to bid may be reserved expressly by or on behalf of the seller.

(4) Where notice has not been given that a sale by auction is subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ or induce any person to bid at such sale on his behalf, or for the auctioneer to employ or induce any person to bid at such sale on behalf of the seller or knowingly to take any bid from the seller or any person employed by him. Any sale contravening this rule may be treated as fraudulent by the buyer.

Risk of Loss.

Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not, except that—

(a) Where delivery of the goods has been made to the buyer, or to a bailee for the buyer, in pursuance of the contract and the property in the goods has been retained by the seller merely to secure performance by the buyer of his obligations under the contract, the goods are at the buyer's risk from the time of such delivery.

(b) Where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

Where goods are sent in compliance with an order, but marked "C. O. D.," even though the effect of this were to withhold the title, the risk would be thrown on the buyer.

Transfer of Title.

It is often important to know whether a sale has been completed in order to determine on whom the loss shall fall in case of a destruction of the property, or to ascertain whether the creditors of the buyer or the seller can attach or levy on the subject matter of the sale to satisfy their claims.

Whether or not the title to the property has been transferred depends primarily on the intention of the parties.

If the circumstances show that the parties intended the sale to be complete, and there is nothing remaining

to be done by either party in completing the sale, then the title to the subject-matter has passed to the buyer.

If anything remains to be done, as, for instance, if the seller is to deliver the sheep to the drover at a place agreed upon, or the sheep are to be selected, or weighed, the sale is not completed until the thing is done. It is presumed in such cases that the parties intended to make the transfer of the title depend upon the performance of the thing yet to be done.—Fitch.

Where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer as a rule acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

Where the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith, for value, and without notice of the seller's defect of title.

Creditors' Rights Against Sold Goods in Seller's Possession.—Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods and such intention of possession is fraudulent in fact or is deemed fraudulent under any rule of law a creditor or creditors of the seller may treat the sale as void.

The law in this country as to the effect of retention of possession on the rights of creditors is in much conflict and the different rules are locally firmly fixed. All

states, however, agree that if the retention is fraudulent in fact, the sale is void as to creditors.

Negotiable Document of Title.—A negotiable document of title is a writing stating that the goods referred to therein will be delivered to the bearer, or to the order of any other person named in such document. Such documents may be negotiated by delivery or by indorsement, either by the owner thereof or by an agent authorized to receive and deliver the goods.

The indorsement of a document of title does not make the indorser liable for any failure on the part of the bailee who issued the document or previous indorsers thereof to fulfill their respective obligations.

[Mercantile usage in regard to documents of title differs from that in regard to bills and notes in the matter to which this section relates. It states the existing law, even in jurisdictions where statutes have made documents of title negotiable.—Shaw *vs.* Railroad Co., 101 U. S. 557; Mida *vs.* Geissmann, 17 Ill. App. 207.]

Performance of the Contract.

It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract to sell, or sale.

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions; that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

Place, Time and Manner of Delivery.—(1.) Whether it is for the buyer to take possession of the goods or for

the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, or usage of trade to the contrary, the place of delivery is the seller's place of business if he have one, and if not his residence; but in case of a contract to sell or a sale of specific goods, which to the knowledge of the parties when the contract or the sale was made were in some other place, then that place is the place of delivery.

(2.) Where by a contract to sell or a sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3.) Where the goods at the time of sale are in the possession of a third person, the seller has not fulfilled his obligation to deliver to the buyer unless and until such third person acknowledges to the buyer that he holds the goods on the buyer's behalf; but as against all others than the seller the buyer is regarded as having received delivery from the time when such third person first has notice of the sale.

(4.) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5.) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

Delivery of Wrong Quantity.—(1.) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if

the buyer accepts or retains the goods so delivered, knowing that the seller is not going to perform the contract in full, he must pay for them at the contract rate. If, however, the buyer has used or disposed of the goods delivered before he knows that the seller is not going to perform his contract in full, the buyer is not liable for more than the fair value to him of the goods so received.

(2.) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

Right to Examine the Goods.—The general rule is that the buyer must be given a reasonable opportunity to examine the goods, but where goods are delivered to a carrier by the seller, in accordance with an order from or agreement with the buyer, upon the terms that the goods shall not be delivered by the carrier to the buyer until he has paid the price, whether such terms are indicated by marking the goods with the words "Collect on delivery," or otherwise, the buyer is not entitled to examine the goods before payment of the price in the absence of agreement permitting such examination.

The above states the practice of the large express companies and in general the existing law.—Wiltse *vs.* Barnes, 46 Ia., 210.

What Constitutes Acceptance.—The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have

been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

But acceptance does not bar action for damages or other legal remedy for breach of any promise or warranty in the contract.

Unpaid Seller's Lien.

When Right of Lien May be Exercised.—Subject to the provisions of statute law, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:

(a) Where the goods have been sold without any stipulation as to credit;

(b) Where the goods have been sold on credit, but the term of credit has expired;

(c) Where the buyer becomes insolvent.

The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

When Lien is Lost.—The unpaid seller of goods loses his lien thereon,—

(a) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the property in the goods or the right to the possession thereof;

(b) When the buyer or his agent lawfully obtains possession of the goods;

(c) By waiver thereof.

Stoppage in Transitu.

When the buyer of goods is or becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them *in transitu,* that is to say, he may resume possession of the goods at any time while they are in transit, and he will then become entitled to the same rights in regard to the goods as he would have had if he had never parted with the possession.

When Goods are in Transit.—Goods are in transit in a legal sense,—

(a) From the time when they are delivered to a carrier by land or water, or other bailee for the purpose of transmission to the buyer, until the buyer, or his agent takes delivery of them from such carrier or other bailee;

(b) If the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them, even if the seller has refused to receive them back.

Goods are no longer in transit,—

(a) If the buyer or his agent obtains delivery of the goods before their arrival at the appointed destination;

(b) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent; and it is immaterial that a further destination for the goods may have been indicated by the buyer;

(c) If the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent.

Ways of Exercising the Right to Stop.—(1) The unpaid seller may exercise his right of stoppage in transitu either by obtaining actual possession of the goods or by giving notice of his claim to the carrier or other bailee in whose possession the goods are.

(2) When notice of stoppage in transitu is given by the seller to the carrier, or other bailee in possession of the goods, he must redeliver the goods to, or according to the directions of, the seller. The expenses of such delivery must be borne by the seller.

The carrier is not obliged to surrender the goods unless the document of title, as a bill of lading, etc., is surrendered.

Resale by the Seller.—Where the goods are of a perishable nature, or where the seller expressly reserves the right of resale in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time, an unpaid seller having a right of lien or having stopped the goods in transitu may resell the goods. He is not thereafter liable to the original buyer upon the contract to sell or the sale or for any profit made by such resale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

It is not essential to the validity of a resale that notice of an intention to resell the goods, nor of the time and place of such resale be given by the seller to the original buyer. The resale may be made either by public or private sale.

Legality of the Sale.

The subject-matter of the contract must be legal in order to make a binding contract of sale. The legality of the subject-matter depends on the same rules as in any other contract; it is legal unless the law declares it to be illegal, and a sale is always presumed to be legal until its illegality is shown.

At common law the sale of articles having an immoral effect, or to be used for an immoral purpose, such as obscene publications, gambling instruments, etc., was illegal, and this rule still prevails in all the states, unless it has been expressly changed by a statute. In all the states the statutes, in addition to this, expressly provide that the sale of other articles of different kinds shall be illegal, except under certain conditions. For example, restrictions are put upon the sale of intoxicating liquors and poisons in nearly all the states.

Whether a sale is illegal or not is determined by the law of the place where it is to be performed.

Effect of Illegality.—An illegal sale is absolutely void, hence there can be no ratification of it.

If a sale is made of several articles for one price, and part of them are legal and the others illegal, the whole contract is tainted with illegality, and no money can be recovered for any of the articles.

If an illegal sale has been executed by either or both parties, the law will not relieve either party from its effect.

If the subject-matter of the sale has been delivered, the buyer may keep it and refuse to pay the price; if the buyer has paid the price but the subject-matter has not

yet been delivered, the seller may refuse to deliver. This is because of the general rule that in all illegal transactions the law leaves the parties just where it finds them. —Fitch.

Remedies for Breach of Contract.

Remedies of the Seller.—1. *Action for the Price.*—Where the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract or the sale, the seller may maintain an action against him for the price of the goods.

2. *Action for Damages for Non-Acceptance.*—Under certain conditions, the seller may also maintain an action for damages for non-acceptance of the goods. The profit the seller would have made if the contract or sale had been fully performed may be considered in estimating such damages.

Remedies of the Buyer.—1. *Action for Converting or Detaining Goods.*—Where the property in the goods has passed to the buyer and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain any action allowed by law to the owner of goods of similar kind when wrongfully converted or withheld.

This allows trover, replevin, equitable, or other relief, as the local law may warrant.

2. *Action for Failing to Deliver Goods.*—Where the property in the goods has not passed to the buyer, and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain an action against the seller for damages for non-delivery.

The measure of damages is the loss directly and naturally resulting in the ordinary course of events, from the seller's breach of contract.

3. *Specific Performance.*—Where the seller has broken a contract to deliver specific or ascertained goods, a court of equity may, if it thinks fit, on the application of the buyer, direct that the contract shall be performed specifically, without giving the seller the option of retaining the goods on payment of damages.

4. *Remedies for Breach of Warranty.*—Where there is a breach of warranty by the seller, the buyer may, at his option,—

(a.) Accept or keep the goods and set up against the seller the breach of warranty by way of recoupment in diminution or extinction of the price;

(b.) Accept or keep the goods and maintain an action against the seller for damages for the breach of warranty;

(c.) Refuse to accept the goods, if the property therein has not passed, and maintain an action against the seller for damages as for the breach of warranty;

(d.) Rescind the contract to sell or the sale and refuse to receive the goods, or if the goods have already been received, return them or offer to return them to the seller and recover the price or any part thereof which has been paid.

But where the goods have been delivered to the buyer, he cannot rescind the sale if he knew of the breach of warranty when he accepted the goods, or if he fails to notify the seller within a reasonable time of his intention to rescind.

Exemptions of Property.

A debtor enjoys the right to retain a certain amount of property without its being liable to attachment, distress, execution, or any other process at the suit of the creditor. This right is called exemption.

A judgment creates no lien upon property exempt from execution, and execution creates no power over it. It is placed beyond the reach of the law, is in the absolute control of its owner, and the law takes cognizance of it only for the purpose of protecting the owner in its enjoyment.

Property exempt before the death of a debtor continues exempt afterwards in favor of his widow and children.

In nearly all the states there are provisions making homesteads exempt. A homestead is real property, consisting either of a certain number of acres of agricultural land, or a town lot or lots, owned by the head of the family, and occupied by the family as a home.

CHAPTER IV.

AGENCY.

Definitions.—An *agent* is one who acts for and represents another, called his *principal.* *Agency* is the legal relation existing between such persons, and is more fully defined as "the relation between two or more persons created by a contract, express or implied, by which one party (the agent) undertakes, with more or less discretionary power, to represent another (the principal) in the transaction of certain lawful acts or business."

Most of the things that an individual may do in person, he may do through a representative or agent. In the transaction of business it is necessary for individuals, and still more so for corporations, to employ persons to conduct affairs and perform services for them, hence the subject of Agency is an important branch of business law.

Agency in General.—The relation of principal and agent implies that the principal acts by and through the agent, so that the acts in fact of the agent are the acts in law of the principal; and only when one is authorized by another to act for him in this way, and to this extent, is he an agent. One who is disqualified from contracting on his own account may act as the agent of another; thus infants, married women, and aliens may act as agents for others.

A principal is responsible for the acts of his agent, not only when he has actually given full authority to the agent thus to represent and act for him, but when he has, by his words, or his acts, or both, caused or permitted the person with whom the agent deals to believe him to be clothed with this authority. And a man may be thus held as a principal, either because he has in some way authorized *all* persons to believe that he has constituted some other man his agent, or because he has authorized only the party dealing with the supposed agent to so believe. For all responsibility, says Parsons, rests upon two grounds, which are commonly united, but either of which alone is sufficient; one, the giving of actual authority; the other, such appearing to give authority as justifies those who deal with the supposed agent in believing that this authority was given him.

A *general agent* is one authorized to represent his principal in all his business, or in all his business of a particular kind. A *special* or *particular agent* is one authorized to do only a specific thing or a few specified things. It is not always easy to discriminate between these; but it is often important, by reason of the rule that the authority of the *general* agent is measured by the usual scope and character of the business he is empowered to transact. By appointing him to do that business, the principal is considered as saying to the world that his agent has all the authority necessary to the doing of it in the usual way.

And if the agent transcends his actual authority, but does not go beyond the natural and usual scope of the business, the principal is bound, unless the party with

whom the general agent dealt knew that the agent exceeded his authority.

For if an agent does only what is natural and usual in transacting business for his principal, and yet goes beyond the limits prescribed by him, it is obvious that the principal must have put particular and unusual limitations to his authority; and these cannot affect the rights of a third party who deals with the agent in ignorance of these limitations.

But, on the other hand, the rule is, that if an agent who is specially authorized to do a specific thing exceeds his authority, the principal is not bound, because the party dealing with such agent must inquire for himself, and at his own peril, into the extent and limits of the authority given to the agent.

Here, however, as before, if the party dealing with the agent, and inquiring, as he should, into his authority, has sufficient evidence of this authority furnished to him by the principal, and, in his dealings with the agent, acts within the limits of the authority thus proved, he cannot be affected by any reservations and limitations made secretly by the principal, and wholly unknown to the person dealing with the agent.—Parsons, Laws of Business.

Who May Be Principal and Agent.—Generally, every person who is competent to act in his own right and in his own behalf may appoint and act by an agent, but lunatics, infants, alien enemies, and all who are incapable of contracting, may not be principals.

Any person of sound mind and understanding may be an agent. Husband and wife are competent to be agents for each other. An infant or minor—one under

twenty-one years of age—may be an agent and bind his principal by his acts. Any one, therefore, except a lunatic, imbecile, or infant of tender years, may be an agent. If the principal chooses and empowers an agent, he must be responsible for the results.

Appointment and Authority.

The authority of an agent may be *express* or *implied*

Express appointment of an agent may be by instrument under seal, by writing not under seal, or verbal.

When the act to be done by the agent is the execution of an instrument legally requiring a seal, the authority must be given under seal. Such a formal authority is called a power of attorney, and the agent is an attorney in fact.

In some cases, the agent's authority is required by statute to appear in writing; otherwise, it may be verbal for all ordinary purposes.

Implied authority of an agent occurs when one person has so placed another that the latter may be fairly understood by strangers to represent the principal, who will not be allowed to escape liability to a third party who, acting in good faith, has relied on these appearances.

Scope of the Agent's Authority.

Within the limits of his employment all the acts and contracts of an agent are in legal effect the acts and contracts of the principal.

The principal is bound by and entitled to the benefits of all the acts and contracts of the agent done or made in good faith within the apparent scope of the agent's authority, but as soon as the agent transcends the limits

of his employment he ceases to represent his principal, and the latter is no longer bound.

These limits of employment unless expressly defined are determined by the nature and requirements of his position, or the thing to be done by him. If he is a general agent, as one employed to manage some department of his principal's business with a certain amount of discretionary power, so far as that department is concerned, any act of his which is fairly within the authority usual to his position will bind his principal even though contrary to the principal's instructions.

But if he is especially appointed for some particular purpose without discretionary power, then any act of his which exceeds the actual authority given him will not bind his principal, and those dealing with such an agent are held to ascertain the extent of his authority or take the risk of failing to hold the principal to account.

Thus, a salesman or agent whose authority is limited to soliciting orders for goods has no authority to warrant them, unless that is the trade custom in the case of such goods.

Where the agent is acting under written instructions, the nature and extent of the authority must be ascertained from the writing itself and not by outside evidence.

But where the principal by his declarations of conduct allows third parties to believe that the agent has more extensive powers than those really granted, he will be bound to such third parties who have dealt with the agent upon the faith of such apparent authority.

The authority of a special agent is strictly construed, while the authority of a general agent is broadly construed.

Execution of Authority.

When an agent executes a sealed instrument as such, he should do so in the name of his principal.

If the agent contracts in his own name, describing himself as agent or attorney for his principal, the contract is the contract of the agent and not of the principal.

If Adam Smith executes a deed for John Brown, he should sign "John Brown, by his attorney in fact, Adam Smith."

In any written instrument, whether under seal or not, the agent must in some way indicate his principal by name. If the instrument be not under seal, the legal test as to who is liable on the contract is whether the *intent* of the agent to bind the principal be clearly expressed.

As to negotiable instruments executed by an agent, the agency must be clearly indicated in his signature. See chapter on "Negotiable Instruments."

Appointment and Ratification.

Agency may result from *appointment* or from *ratification*. As a rule, says Professor Burdick, the agent receives his authority to act for and represent the principal before he does anything on the latter's behalf. But at times he does not. For example, A, knowing that B is anxious to sell certain property at a certain price, learns that C is willing to buy it. He is not B's agent. B has neither requested nor authorized him to sell the property. Nevertheless, he undertakes to sell and deliver it to C on B's behalf. He tells B what he has done, and B approves of the act. What is the legal effect of the transaction? Precisely the same as though B had

authorized A to sell the property as his agent. This adoption of the acts of an unauthorized agent is known as *ratification;* and it is a well-established maxim that the subsequent ratification of an act is in law equivalent to a precedent authority to do it. Hence, agency may be created by ratification as well as by previous appointment.

Conditions of Ratification.—The act of an agent can only be ratified, however, under certain conditions, and the chief conditions of ratification are:

(1) The person doing the act must profess to do it on behalf of an existing principal.

(2) The approval of the act must be given with full knowledge of all the facts.

(3) The act must be ratified as a whole. It cannot be ratified in part and repudiated in part.

Thus, if one sells another's horse without his authority warranting it to be sound, and the original owner subsequently ratifies the sale, he must also ratify the warranty, for they are regarded by the law as parts of a single transaction.

Ratification being equivalent to a previous authority, the rights and liabilities of all the parties concerned date back to the original act.

Subagency.

An agent cannot, without authority, appoint a third person to discharge the duties of the agency, so as to make the latter the agent of the principal. In such a case, the agent, and not the principal, is liable for the acts of the subagent.

But an agent may delegate to others the execution of such of his powers or duties as are merely mechanical.

Implied Powers of Agent.

An agent has certain incidental powers which are implied from the circumstances; that is, they are not stated in exact terms, but are understood.

Thus, where he is authorized to sell goods, he may do so on a reasonable credit if such goods are usually sold on credit.

An authority to sell personal property, which is commonly or often sold with a warranty, enables the agent to bind his principal by a warranty. See "Scope of the Agent's Authority," *supra.*

An authority to sell goods that are intrusted to the possession of an agent includes the power to receive payment; and a general power to buy goods will authorize an agent to buy on credit.

The fact that an agent is authorized by his principal to sell certain real estate, and that it is the custom of the locality to make such sales through brokers, authorizes the agent to employ a broker to negotiate the sale.

Duties and Rights of Agents.

Duties.—The agent owes to the principal obedience, diligence, skill, and loyalty.

He is held liable to the principal for any loss that results from not obeying instructions, or from not using ordinary care and diligence in the discharge of his duties. See "Liability of an Agent," *infra.*

An agent is bound to follow specific instructions, except in cases of sudden emergency or necessity, or where given discretionary power as a general agent.

He should keep accounts of his dealings as agent, and should not mingle the goods or funds of the principal with his own.

An agent may not act for the principal and at the same time for himself or for another in the same transaction.

Rights.—The agent is entitled to compensation for his services as agreed upon, or, in the absence of definite agreement as to the amount, as much as such services are reasonably worth.

The agent is also entitled to be indemnified for expenses reasonably incurred in performing the duties of the agency, unless it be expressly stipulated otherwise. But all profits made in the course of the agency belong to the principal.

A *del credere* agent is one who undertakes, for an extra compensation or commission, that the party to whom he sells his principal's goods will pay for them. The contract is not one of guaranty and need not be in writing. See "Factors and Brokers," *infra.*

Liability of an Agent.

Generally, says Parsons, an agent makes himself liable by his express agreement, or by transcending his authority, or by a material departure from it, or by concealing his character as agent, or by such conduct as renders his principal irresponsible, or by his own bad faith.

If he describes himself as agent for some unnamed principal, he is not liable, unless he is proved to be the real principal.

If an agent execute an instrument the language of which would hold him personally, he cannot exonerate himself by showing that in fact he signed it as agent, and that this was known to the other party. Because this would be to vary the terms of a written contract by evidence, which is not permitted, as we have before stated.

A party with whom an agent deals as agent cannot hold him personally, on the ground that he transcended or departed from his authority, if that party knew at the time that the agent did so.

If he exceeds his authority, he is liable on the whole contract, although a part of it is within his authority.

One who, having no authority, acts as agent, is personally responsible. But if an agent transcends his authority through an ignorance of its limits, which is actual and honest, and is not imputable to his own neglect of the means of knowledge, he would not be held, unless an innocent party dealing with him as agent would otherwise suffer loss.

Rights of Third Parties.

Principal's Liability.—As a general rule, the principal is bound by the agent's acts performed in behalf of the principal within the scope of the agent's authority and in the course of his employment.

If the principal be not disclosed, a third party dealing with the agent may hold liable either the agent, or the principal when discovered; but he may not hold both principal and agent.

The principal is also liable for the torts, or wrongful acts, of his agent if committed in the course of the employment.

Agent's Liability.—Generally an agent incurs no liability to third parties for acts or contracts done within the scope of his authority from the principal. He may, however, when acting for his principal, openly pledge his own credit, and bind himself to the performance of a contract which otherwise would have to be performed by his principal.

Where the agent fails to execute his authority properly, or fails to disclose his principal, he becomes personally liable to third parties.

The agent is also liable when he contracts expressly as agent, but without authority, or where the principal is incompetent or irresponsible.

Factors and Brokers.

Definitions, etc.—A commission merchant, or *factor,* is an agent employed to sell merchandise consigned or delivered to him by his principal, for a compensation called a commission. He has the implied power to sell the goods intrusted to him, and to receive payment therefor. He may sue for the principal's debt in his own name, or for damages arising from a breach of the contract to buy, or for any trespasses or torts committed on the goods while in his possession.

A *broker* is one whose business it is to negotiate sales or contracts as an agent, or to make sales and purchases for a commission.

Such agents are variously called produce or grain brokers, real-estate brokers, stock brokers, insurance brokers, exchange brokers, ship brokers, etc., according to the nature of the sales they negotiate.

The authority of a broker varies in different lines of business, being generally measured by the established usages of the trade or market.

Ordinarily, a broker does not have possession of the property as a factor, and thus has no lien for his charges, except for his commissions upon the proceeds of a sale in his hands.

Parsons, in his "Laws of Business," says:

All agents who sell goods for their principals, and guarantee the price, are said in Europe to act under a *del credere* commission.

In this country, this phrase is seldom used, nor is such guaranty usually given, except by commission-merchants. And where such guaranty is given, the factor is so far a surety that his employers must first have recourse to the principal debtor.

Still his promise is not "a promise to pay the debts of another," within the Statute of Frauds. Nor does he guarantee the safe arrival of the money received by him in payment of the goods, and transmitted to his employer, but he must use proper caution in sending it.

And if it is agreed that he shall guarantee the remittance, and charge a commission for so doing, he is liable, although he does not charge the commission.

If he takes a note from the purchaser, this note is his employer's; and if he takes depreciated or bad paper, he must make it good.

A broker or factor is bound to the care and skill properly belonging to the business which he undertakes, and is responsible for the want of it.

A factor intrusted with goods may pledge them for advances to his principal, or for advances to himself

to the extent of his lien for charges and commissions. And his power to pledge them, which grows out of the law-merchant, has been much enlarged by statute in many of the states.

The mere wishes or intimations of his employer, if sufficiently distinct, have the force of instructions. Thus, in New York, a principal wrote to his factor, stating that he thought there was a short supply of the goods he had consigned, and giving facts on which his opinion was founded, and concluded, "I have thought it best for you to take my pork out of the market for the present, as thirty days will make an important change in the value of the article."

This was considered by the court to be a distinct instruction, binding upon the factor; and he was therefore held liable for the loss caused by selling the pork within the thirty days.

All instructions the agent or factor must obey; but he may still, as we have already stated, depart from their letter, if in good faith, and for the certain benefit of his employer, in an unforeseen exigency.

Having possession of the goods, he may insure them; but is not bound to do so, nor even to advise insurance, unless requested, or unless a distinct usage makes this his duty.

He has much discretion as to the time, terms, and manner of a sale, but must use this discretion in good faith. For a sale which is precipitated by him without reason and injuriously is void, as unauthorized.

If he send goods to his principal without order, or contrary to his duty, the principal may return them, or,

acting in good faith and for the benefit of the factor, may sell them as the factor's goods.

Although a factor charges no guaranty commission, he is liable to his principal for his own default; so he is if he sells on credit, and, when it expires, takes a note to himself; but if he takes at the time of the sale a negotiable note from a party in fair credit, and the note is afterward dishonored, this is the loss of his employer, unless the factor has guaranteed it.

If he sells the goods of many owners to one purchaser, taking a note for the whole to himself, and gets it discounted for his own use or accommodation, he is then liable without any guaranty for the payment of that note. So he is if he gets discounted for his own use a note taken wholly for his principal's goods.

But he may discount the note to reimburse himself for advances, without making himself liable. If he sends his own note for the price to his employer, he must pay it.

As a factor has possession of the goods, he may use his own name in all his transactions, even in suits at law; but a broker can buy, sell, receipt, etc., only in the name of his employer. So, a factor has a lien on the goods in his hands for his advances, his expenses, and his commissions, and for the balance of his general account.

And the factor may sell from time to time enough to cover his advances, unless there be something in his employment or in his instructions from which it may be inferred that he had agreed not to do so.

But a broker, having no possession, has no lien. The broker may act for both parties, and often does so.

But, from the nature of his employment, a factor should act only for the party employing him.

A broker has no authority to receive payment for the goods he sells, unless that authority be given him, expressly or by usage. Nor will payment to a factor discharge a debtor who has received notice from the principal not to make such payment.

Generally, neither factor nor broker can claim his commission until his whole service be performed, and in good faith, and with proper skill, care, and industry; and his negligence may be given in evidence either to lessen his compensation or commission, or to bar them altogether. But if the service begins, and is interrupted wholly without his fault, he may claim a proportionate compensation.

If either bargains to give his whole time to his employer, he will not be permitted to derive any compensation for services rendered to other persons. Nor can either have any valid claim against any one for illegal services, or those which violate morality or public policy.

A principal cannot revoke an authority given to a factor, after advances made by the factor, without repaying or securing the factor.

The distinction between a *foreign* and a *domestic* factor is quite important, as they have quite different rights, duties, and powers, by the law-merchant generally.

A domestic factor is one who is employed and acts in the same country with his principal.

A foreign factor is one employed by a principal who lives in a different country; and a foreign factor is as to third parties—for most purposes and under most circumstances—a principal. Thus, they cannot sue the

principal, because they are supposed to contract with the factor alone, and on his credit, although the principal may sue them; and a foreign factor is personally liable, although he fully disclose his agency, and his principal is known.

Brokers' Commissions.

A broker who has successfully brought about a sale cannot be deprived of the commission agreed upon by any change by the principal in the terms of the sale.

Real-estate brokers become entitled to their commissions upon procuring a party for the principal, who afterwards purchases the land from the principal as a result of such introduction.

Dissolution of Agency.

The agency may be terminated or dissolved in the following ways, namely: (1) By limitation; (2) by the direct act of the parties; (3) by change in the condition of the parties; (4) by the destruction of the subject-matter of the agency.

By Limitation.—Where there is a limit to the continuance of the relation between the parties, and that limit has been reached, the agency is said to have expired by limitation.

In case the power or authority is given for a certain time, the expiration of this period will terminate the agency.

Where the particular business for which the agency was constituted has been completed, as where the agent is authorized to sell a span of horses, or purchase a house and lot, such completion will terminate the agency.

By Direct Act of the Parties.—Either party may terminate the agency under certain conditions.

The principal may revoke, that is, recall the authority given to the agent at pleasure, provided the authority remains unexecuted, but the moment it is executed it becomes the principal's contract and is beyond recall; for example, where an agent is authorized to sell property, the principal may revoke the authority up to the time the sale is actually made, not after.

The revocation of the authority of an agent reaches through him to all his sub-agents, and terminates their authority also.

Revocation takes effect as against the agent and his sub-agents from the time they have notice of it, and as to third parties, from the time it is made known to them.

The agent's authority may be absolutely revoked by notice to him from his principal; but one who has dealt with the agent has a right to assume, unless otherwise informed, that the agency continues, and the principal is bound by his agent's dealings, unless the person with whom he is dealing has had actual notice of the dissolution. No special form of revocation is necessary. Where the power was given under seal, it may be recalled by a writing not under seal, or orally; or it may even be implied from the acts of the principal.

These rules in regard to the right of revocation by a principal do not apply where the agent has a personal interest in the property or business. The agent may terminate his employment by renouncing his authority. This may be done at any time, and the agent is bound to give notice of it to his principal. Unless, however,

the agreement provides for such renunciation at pleasure, the agent will make himself liable to his principal for any resulting damages.

By Change in Condition of Parties.—Any change in the condition of the principal which renders him incompetent to contract, or in the condition of the agent which renders him incompetent to do the business for which he was engaged, will dissolve the agency. The principal changes which will have this effect are as follows: (1) Bankruptcy; (2) incompetency; (3) marriage; (4) death.—Fitch, "New Commercial Law."

Bankruptcy.—The rule is that the bankruptcy of either party terminates the relation of agency.

In the case of the bankruptcy of a principal he becomes incapable of fulfilling any contract made by an agent, inasmuch as the control of his property passes out of his hands.

But if the agent has an interest in the business, the bankruptcy of the principal does not terminate the agency or abrogate the agent's rights in the premises.

If an agent becomes bankrupt, his authority ends except in so far as regards the doing of some formal act not involving the transfer of any interest. Thus a bankrupt agent may execute a deed of property already sold by him for his principal.

These rules apply only in cases of legal bankrupts, that is, where the party has been declared bankrupt by a competent court.

Incompetency of either a principal or an agent terminates the agency, that is, where either loses his contractual power, as through insanity, etc., but as a rule such incompetency must be established by legal proceedings.

An agent becomes incompetent so as to dissolve the agency when from any cause he becomes incapable of transacting the business of his principal.

Marriage under the common law dissolved the agency where a single woman was either principal or agent, because her marriage suspended her contractual power. The common law, however, permitted her reappointment as an agent even though she could not be a principal. But the rights of married women have been so greatly changed by statute since the common law governed in such cases that in any case of principal and agent involving married women, the laws of the state in which it occurs must be consulted.

Death of either party to the relation terminates the agency. The authority of an agent expires with him and does not pass to his heirs or personal representatives.

The death of a principal is an absolute termination of agency, because an agent's acts must be the acts of an existing person capable of fulfilling his contract.

Under the common law the termination of the agency dates from the time of the principal's death, and not from the time of giving notice either to the agent or the third parties concerned.

"Self-interest should induce every man to understand his own rights and obligations. As the subjects of law certainly, if not as its makers, all ought to know enough to avoid its penalties and reap its benefits. Unquestionably, on the score of practical utility, no kind of knowledge can stand higher; for it comes into immediate application almost every hour we live."—Judge Timothy Walker.

CHAPTER V.

BAILMENTS.

Definitions.—A bailment is a delivery of some chattel by one party to another, to be held for some specified purpose, and to be returned or delivered over when that purpose is accomplished.

The party so delivering the property is called the *bailor;* the party receiving it the *bailee;* the property itself is called the thing bailed, and sometimes, the subject-matter.

In a sale the essential element is a *change of ownership,* while in a bailment the essential element is a change of possession without a change of ownership.

In loaning articles, storing goods, hiring horses or furniture or other property, carrying goods from place to place, etc., we have examples of what the law calls bailments.

Test of Bailment.—Unless the specific chattel delivered is, by the express or implied agreement of the parties, to be returned, the transaction is usually deemed a gift or sale, and not a bailment. If it is to be returned, however, it is still a bailment, though it is to be returned in altered form, as where hides are delivered to be tanned into leather, or logs are delivered to be sawed and restored or delivered over as lumber.

But where one receives property to be consumed, under an agreement to return, not the identical thing but

another thing of like kind, he is a purchaser and not a bailee, and is not excused from making the return, as are most bailees, by showing that the property was lost or destroyed without his fault. It is a sale to be repaid in kind.

Kinds of bailments.—Bailments are ordinarily divided into the following classes:

(1) *Deposit*: A bailment of goods delivered by one man to another to be kept gratis for the benefit of the bailor.

(2) *Mandate*: A delivery of goods to somebody who is to carry them or do something to or about them gratis.

(3) *Loan for use*: Where goods or chattels are lent to a friend gratis to be used by him.

(4) *Pledge or pawn*: A bailment of chattels as security for some debt or engagement.

(5) The different sorts of *hiring,* namely: (a) Hire of things, where the bailee pays for the custody and use of the bailed thing. (b) Hire of services, where the bailor hires the bailee to bestow labor and skill on the bailed property. (c) Hire of custody, where the bailee is to keep and care for the property for reward. (d) Hire of carriage, where the bailee is to transport goods from place to place for hire.

Bailments may also be classified as (1) beneficial to the bailor alone, as in the case of deposit and mandate; (2) beneficial to the bailee alone, as in the case of loan for use; (3) beneficial to both parties, as in the case of pledge or pawn and in the different sorts of hiring.

Rights of Bailors and Bailees.

A bailment must be made by the actual owner of the property, or by a virtual owner who has a right to its disposal.

One may become a bailee, however, without any delivery from the bailor; for instance, if he finds lost property, or if, being a trader, after selling goods, he holds them subject to his customer's order. But the bailment relation is not created if one is in wrongful possession of the property of another, as is the case in holding stolen property.

While the bailee is in actual possession of the property bailed, he has all the rights of owner, as against third persons who may attempt to deprive him of his possession.

Nature of the Bailment.

The bailment itself is a transaction entirely distinct from the contract in accordance with which the bailment is undertaken. The bailment is really only the act of putting the bailee into possession of property of the bailor, with a duty to return it to the bailor, or to his order, when the special purpose for which it was delivered is accomplished.

The contract for the bailment is the agreement by which this transaction is controlled, and is governed by the same principles as any other contract.

Gratuitous Bailments.

A gratuitous bailment is one undertaken as a favor on the part either of the bailor or of the bailee, as the case may be.

The rule of contracts being, that a promise made simply as a favor is without consideration and therefore not legally binding, an agreement for a gratuitous bailment therefore is not a binding contract, and either party may refuse to undertake the bailment.

But as soon as the bailor has given the property into the bailee's possession, the trust thus imposed makes both parties responsible for the performance of their duties as bailor and bailee respectively.

Where the Bailor alone is benefited.—In such cases the bailment is undertaken simply as a favor to the bailor. The bailee in this case may, for example, store goods, or carry them, or do work upon them (as repairing), for the bailor without charge. So long as the bailor does not pay for it, it makes no legal difference that the bailment is in the line of the bailee's regular business.

The bailment being a favor to the bailor, the bailee need only take slight care in looking after the bailor's property, and will only be responsible to the bailor for its loss or injury on account of great negligence. And he will not be responsible at all if he does not consent to the bailment.

Where the Bailee alone is benefited.—The most common case of this kind is that of lending property to another. Here the bailor's consent is, of course, necessary to make it a bailment and not a wrongful taking.

The bailee's possession of the property being a favor done him by the bailor, he must take good care of the property, and is responsible to the bailor for any loss or injury caused by even slight negligence. But he

is not responsible for loss or damage caused by events or accidents beyond his control.

The bailee may make special stipulations as to the extent of his liability; but he cannot in this way exempt himself from his duty to take great care of the property, or from his responsibility for slight negligence.

The bailee must not sell, pledge, give away or lend the property, nor use it for other than the purpose for which he borrowed it. If he does, he becomes absolutely responsible to the bailor for it.

The bailor may terminate the bailment at his pleasure, except where the loan is for a definite time or purpose. If the bailee fails to return the property at the bailor's rightful demand, he then becomes absolutely responsible for it.

Bailments for Hire.

Where a bailment is undertaken for hire, it is a transaction in which both parties are benefited. The agreement of both parties is necessary before the bailment can be undertaken. This agreement is a binding contract based on the consideration of their mutual promises.

In bailments for hire the bailee is under obligations to take ordinary care of the property; that is, he is responsible to the bailor if he fails to take such care as an ordinarily prudent man usually takes in the same class of business.

The bailee must not give away or sell the bailor's property; but, unless the contract calls for his personal use or possession of the property during the bailment,

he may transfer his interest as bailee to another, or allow another to use it.

Hired Services about the Property.—In bailments of this character the bailee takes charge of the property,—for example, warehousemen, safe deposit companies, grain elevators, etc.; or does some work on it by way of repairing or altering,—as carpenters, blacksmiths, painters, etc.; or carries it from place to place (where the carrier is not a common carrier).

The bailor in such cases is entitled to the exercise of ordinary skill on the part of the bailee. The bailee, on the other hand, is entitled to reasonable pay for his work, if none has been agreed upon.

The bailee must always use ordinary care, which is to be determined by the circumstances in each case. He will not then be liable for any loss or damage not occasioned by his own negligence. In case of an accident he must endeavor to make the loss as little as possible. He may make special stipulations in regard to his responsibility, but he cannot thereby excuse himself from his obligation to take ordinary care.—Weed.

Hired Use of Property.—This class of bailments includes the common examples of hiring horses, furniture, boats, etc.

The bailor and bailee in such cases have substantially the same rights and duties as in the case of hired services, but in using property for hire the bailee pays for the bailment and therefore has no lien as before.

Degrees of Care.

In cases of bailments, the courts generally recognize three degrees of care, namely, (a) slight care; (b) great

care, and (c) ordinary care; and also three coordinate degrees of negligence. The absence of even slight care is gross negligence; the absence of ordinary care is ordinary negligence, and the absence of great care is slight negligence.

The degree of negligence in any particular case can only be determined with reference to the facts and circumstances of the case. The value and intrinsic qualities of the thing bailed are to be considered, and also the character and habits of the community, the usages of trade, and the character and habits of the bailee himself, if these are known to the bailor.

Pledge or Pawn.

The bailment called a *pledge* or *pawn* is the depositing of personal property with another to secure the payment of a debt owed to him, or the fulfillment of a contract made with him.

The bailor in such cases is called the *pledgor;* and the bailee the *pledgee.*

Common examples of a pledge are, the borrowing of money on articles by pawning them, and *collateral security* transactions.

A *pawn* is a depositing of property with another to secure an advancement of money, the property to be redeemed by a repayment of the money, with interest usually.

A *collateral security* is a pledge for the additional security of some debt or contract, only to be resorted to after default on the pledgor's part; thus, if A held a note made by B, but he himself owed C a sum of money, he might deposit B's note as collateral security with C,

to be resorted to by C, in case he (A) failed to pay C.

All kinds of personal property may be pledged, including promissory notes, bills of exchange, bank bills, bonds, stocks, leases, mortgages, insurance policies, copyrights, patent rights, etc. But pensions cannot be pledged.

A pledge is somewhat similar to a chattel mortgage; but a difference is that in a mortgage the mortgagor retains possession of the property, while in a pledge the essential element is that the pledgee shall have and keep possession of it. The mortgagee, too, may sell his mortgage, and a purchaser will have a good title in case the mortgagor does not redeem the property by paying him the debt for which the mortgage was given. But the pledgee cannot sell the pledge till the debt is due. If he does sell it, he is liable to the pledgor for its full value, even if the debt is not paid.

The pledgee may, however, usually assign his interest in the property, subject to all the pledgor's rights.

The pledgor, on the other hand, may sell or otherwise transfer the title to the property pledged, subject of course to the pledgee's rights.

A pledge is only another form of a bailment for hire, says Weed, since both parties are benefited by the transaction. The rights and duties of the pledgor and pledgee are therefore the same. The pledgee is bound to take ordinary care of the property pledged and is responsible for any loss or injury to it while in his possession, occasioned by his failure to use such ordinary care.

Here, also, the special stipulations in each transaction must be observed, unless contrary to local statutes

or to the policy of holding the pledgee responsible for the use of ordinary care and diligence.

According to the nature of the transaction, as soon as there has been a default on the pledgor's part as to the secured undertaking, the pledgee may sell the property at public auction after due notice to the pledgor, unless, by special agreement or by statute, he is then to become the full owner, or is to make a private sale.

If more is realized from the sale than is sufficient to cover the debt and the expenses of the sale, the surplus belongs to the pledgor; but if less, the pledgee has a good claim on the pledgor for the amount still due.

The pledgee is not bound to sell in case of a default; but, by not selling, he does not become the owner of the pledge, unless it is so agreed or is so by statute. He may bring a suit first on the debt itself.

Postmasters.

The government becomes a bailee for hire in carrying the mails, and the postmasters are its agents for transacting the business. The postage stamp represents the recompense for the bailment. The government is the true bailee; and, since it cannot be sued by one of its citizens, on grounds of public policy, except in a court of claims, its liability is very slight.

The postmaster's responsibilty is determined by the rules of agency; and he is only liable for losses caused by his wilful misconduct, or by some negligence while acting outside of his public employment, as when his regular vocation is that of a storekeeper. So long as he is acting within the scope of his employment, he is not personally liable for acts of negligence.

Innkeepers.

The relation of an innkeeper to his guests, and particularly toward the goods of his guests, is a peculiar one, says Professor Huffcutt, and is the result of a state of society now largely outgrown.

An innkeeper or hotel-keeper is one who holds himself out to the public as ready to entertain travelers or transients as guests for a compensation, furnishing food and lodging, or lodging alone.

The keeping of an inn is regarded by the law as a public calling. The landlord must receive all who present themselves in proper condition to be guests, so long as he has accommodations for them; together with their baggage, horses, vehicles, and such other personal property as they may bring with them.

It is the innkeeper's duty to take exceptional care of all the property which a guest brings on to the premises of the inn. He is therefore liable for any loss or damage caused by the negligence or misconduct of himself, or his servants, or his guests, or any whom he may admit to the inn.

An innkeeper is probably not liable for loss caused by an accidental fire, or by some act of God (lightning, floods, etc.), or by a public enemy (one with whom our country is at war). Nor is he liable if a want of ordinary care or misconduct on the part of the guest contributes to, or causes, the loss.

This peculiar responsibility arises only in the relations of an innkeeper to his guest, using both of these terms in their strict sense. Restaurants, sleeping-cars,

boarding and apartment houses are not *inns,* nor their proprietors *innkeepers.* A *guest,* too, must strictly be a transient. If a person makes a special contract for board and lodging, he then becomes a boarder simply, even if he is stopping at an inn. Keepers of boarding-houses are simply bailees for hire, and need only exercise the ordinary care required of such bailees.

By statutes now very generally adopted, the innkeeper may modify his exceptional responsibility for the valuables of his guests, by posting notices in the rooms to the effect that valuables must be deposited in the safe at the office, or he will not be responsible for them. The statutes usually provide where these notices are to be posted, and how they are to read. The innkeeper still has his exceptional responsibility for such valuables as are deposited with him for safe keeping; but for others, he is only liable to the same extent as an ordinary bailee. A guest would not probably be expected to deposit his watch and chain, or his ready money.

The innkeeper has a right to a suitable reward for his entertainment. He consequently has a lien for its payment on the effects of his guests which are brought on to the premises. If he lets the property go out of his hands he loses this lien.

Common Carriers.

For the law of bailments regarding goods intrusted to Common Carriers, see Chapter X. The carriage of passengers is not a bailment except in so far as their baggage is concerned.

Telegraph Companies, etc.

Telegraph and telephone companies are not common carriers, according to the interpretation of the law in most American jurisdictions. They are, however, bound to serve all persons alike, for a uniform reasonable compensation. While they do not insure the safety and accuracy of messages intrusted to them for transmission, they are bound to use reasonable care and are liable for ordinary negligence. They may become insurers by contract for increased compensation.

It is generally held that such companies may by contract stipulate against their own negligence, though some courts have declared such contracts contrary to public policy.

Only the sender of a message can sue for breach of contract, since he alone made a contract with the company, but either the sender or the person addressed may sue for damages arising from the negligence of the company. But if the sender was the agent of the addressee the latter may sue for damages in tort.

As a general rule, it is a penal offense for a telegraph company or any of its employees to divulge the contents of a message to any one except the person addressed.

CHAPTER VI.

PARTNERSHIP.

Definitions, etc.—A partnership is declared by statute in England to be "the relation which subsists between persons carrying on a business in common with a view of profit."

The legislature of the State of New York has declared that "a partnership, as between the members thereof, is an association, not incorporated, of two or more persons who have agreed to combine their labor, property and skill, or some of them, for the purpose of engaging in any lawful trade or business, and sharing the profits and losses as such between them." A somewhat similar declaration is made in the civil code of California.

Essentials of Partnership.—All definitions agree in requiring for a partnership (a) a voluntary association of two or more individuals; (b) a business owned by them in common; and (c) the carrying on of the business for profit.

The agreement of the parties is the first essential. No one can be forced into the relation; he must become a partner by and with his consent.

The Firm.—The contracting parties, called partners, or copartners, are collectively called a firm.

The firm is usually considered as an entity—like a corporation—distinct from the partners who compose it; but the law has generally refused to adopt this view,

regarding the partners as joint owners of the firm property, and jointly liable for firm debts.

A mere sharing of profits will not make one a partner. To constitute a partnership the sharing of profits and losses must be by parties who have united their property, labor, or capital in some lawful enterprise in which each is to be a principal or proprietor.

Who May Become Partners.

All persons, except those incompetent to contract, as lunatics and alien enemies, may become partners.

An infant, since his contracts are voidable only, may become a partner and have all the rights and duties of a partner. But the plea of infancy will exempt his private property from liability for firm debts. As stated in the chapter on Contracts, an infant may ratify the contract, on attaining majority, and he will thus be bound to third parties.

Married Women.—The statutes have generally given *married women* some power to become partners, except with the husband; and even where a married woman has no power to enter a partnership, her contribution to the firm capital will be liable for firm debts.

A *corporation* cannot legally enter into a partnership, either with individuals or with other corporations, unless authorized by charter or statute.

Various Kinds of Partners.

Partners are classed as active, ostensible, nominal, secret, silent, or dormant.

An *active partner* is one who takes an active part as partner in the firm's business.

An *ostensible partner* is one held out to the world as such; where he is not actually a partner, he is called a *nominal partner.*

A *secret partner* is one who is active in the management of the firm's business but who is not known as a partner; if he takes no part in the firm's business, he is a *silent partner;* and if he takes no part in the firm's business and his name does not appear in the title of the firm, he is a *dormant partner.*

Articles of Partnership.

The legal relation of partnership is formed by mutual agreement between the parties, which need not be in writing, though a written agreement signed by the partners is preferable. Such an agreement is commonly called the "articles of partnership."

Articles of partnership should contain (a) the names of the contracting parties; (b) the fact that they thereby constitute themselves a partnership; (c) the time of the commencement of the partnership; (d) its duration; (e) the nature of the business; (f) the place where it is to be carried on; (g) the name of the firm; (h) names of the parties who are to manage the business; (i) the property, labor, or skill contributed by each; and (j) the proportion in which the profits and losses are to be shared.

The articles should also indicate when profits are to be divided and accounts settled, the manner of settlement at the end of the term, and any restrictions on the power of a partner. There may also be a written agreement embodied in the articles as to arbitration

of disputes between partners, continuance of the business after the death or disability of any partner, and other matters that may become causes of dispute.

Partnership Property.

The firm's capital is the beginning of partnership property. This consists of the sums contributed by the partners for carrying on the business. Such contributions may be in money, or in goods, real estate, patent right, trade-marks, or other forms of property. The partners may contribute equally or unequally to it—or one may furnish all the capital, while the others contribute skill or experience which are considered as necessary to the success of the partnership enterprise as money.

The firm capital and whatever is added thereto or acquired by means thereof is owned by the firm as joint property.

One partner may not take any specific portion of the partnership and claim it as his exclusively. The partner's interest is merely a right to share in the assets of the firm after its debts have been paid.

But the joint property may be converted into the separate property of a partner or of a stranger by a sale with the consent of all the partners.

Firm Name and Goodwill.

The *firm name* is an asset of the partnership, and sometimes becomes of great value. It may be sold separately, but is seldom sold except in connection with the business or good-will.

Trademarks and trade names used in the partnership

business also become part of the firm's assets, and may be transferred as other property.

Goodwill is another partnership asset distinct from the capital and of more or less value. It is defined as "(a) the commercial advantage possessed by any business, due to its established popularity, reputation, patronage, advertising, location, etc., over and beyond its mere stock and capital; (b) friendly feeling or influence, exerted with the view of transferring the custom of any shop or business to a successor; (c) the right and title to take up a trade or business connection, purchased of an outgoing owner, tenant, or occupier."

Goodwill does not pass with a sale of the property of the firm, but it does pass with a sale of all the assets of the firm or all the interest of any partner therein.

Partnership Real Estate.

A partnership, not being a distinct or artificial person like a corporation, cannot hold real estate in its own name; but the partners take title jointly, even though the conveyance be in the firm name. The deed should name the partners individually as grantees.

Real estate contributed as firm capital, or purchased with the funds of the firm, although the title be in only one of the partners, is held in trust for all.

When partnership real estate is required to be used for the payment of debts and the adjustment of partnership accounts, it is regarded as converted into personalty; and the rights of the widow and heirs of a deceased partner are so determined. They can force its conversion into cash, if necessary, to secure an adjustment of the partnership estate.

The Powers of Partners.

Rights and Duties.—Generally speaking, the rights of each partner are as follows:

1. To have an equal voice in the management of the business of the firm, unless it be otherwise provided in the partnership agreement.

2. To receive his share of the profits and the surplus after dissolution, as agreed.

3. To have an accounting to ascertain the value of his interest.

4. To have the firm assets applied first to the payment of firm debts before the creditors of an indivdual partner can reach his interest in such assets.

Where there are more than two partners and they differ in opinion, the majority acting in good faith within the scope of the partnership control all matters relating to the conduct of the partnership business. If there are only two partners, the articles of partnership should prescribe the course to be followed in cases of difference of opinion.

The duties of a partner are as follows:

1. To exercise the highest degree of good faith in dealing with the others.

2. To exercise due diligence and skill in the prosecution of the partnership business.

3. Not to use firm property for his own benefit, or to account for it to the others if he so use it.

Power to Bind Firm.—Each partner is regarded by the law as an agent of the firm and of his copartners for the purposes of the partnership business. He is in fact a general agent with discretionary powers.

The articles of partnership usually prescribe the limit of each partner's power; but, where the agreement does not or where the third party with whom the partner is dealing has no notice of such limitations, the power of the partner to bind the firm is determined by the nature and scope of the partnership business according to the usual and ordinary course by which such a business is carried on in the same locality.

Should a partner act beyond his authority, his act may be subsequently ratified by the other partners, like the act of any other agent.

Sale of Partner's Interest.

Any partner may sell his interest in the firm. This operates as a dissolution of the firm. The purchaser acquires only a right to an accounting and to the partner's share of the balance remaining after a full settlement.

Particular Powers.

Each partner, unless otherwise restricted by agreement, has implied power to collect and receipt for the debts due the firm, and to pay debts due by the firm.

He may purchase for the firm, and on its credit, such goods as are necessary for the firm's business; and he may sell the goods of the partnership, and employ servants and agents, for any purpose within the scope of the particular business in which it is engaged.

A partner may borrow money for the needs of the partnership, and may mortgage or pledge the firm property as security therefor.

He has implied authority to issue and indorse commercial paper in the name of the firm; and even if he

give such paper for a private debt without the authority of his copartners, the firm is bound to a *bona fide* holder for value, but not to a holder with notice.

He must in all cases act with the utmost good faith towards his copartners.

A sealed instrument executed by one partner without authority binds him only.

He has no authority to confess judgment against the firm, nor to bind his copartners by a submission to arbitration, nor to make an assignment of the firm's property for the benefit of creditors.

Liabilities of Partners.

A partner is liable to his copartners for any breach of the duty he owes them.

All the partners are *prima facie* liable to third parties for any act done by a partner as agent for the firm within the scope of its business. They are liable for his contracts and for his torts, made or done in the ordinary course of business.

Every member of an ordinary partnership is individually liable for all the debts of the firm; but when one partner is compelled to pay the whole of a partnership debt, he can recover from his copartners their just proportion of the amount he has been compelled to pay.

An incoming partner is not liable for the debts of the firm incurred before he became a partner, unless he agrees to assume such liability.

A retiring partner is not released from liability to creditors for the existing debts of the firm; and he may be held liable to subsequent creditors without notice, unless he properly notifies the public of his withdrawal.

Dissolution of Partnership.

By Act of the Law.—1. A partnership may be terminated by the death of any partner, unless otherwise provided by the articles of partnership, and the surviving partners are sole owners of the firm property for the purpose of winding up its affairs, with due regard to the rights of the widow and heirs of the deceased partner.

2. A judgment of bankruptcy against the firm, or any of its members, operates as a dissolution.

3. In certain cases, a partnership may be dissolved by a *decree of court,* even though the partnership agreement be for a fixed time. The common grounds for such a decree are the misconduct, fraud or misrepresentation, insolvency, or permanent insanity of a partner, chronic quarreling and hostility of the partners, abandonment of the undertaking, or hopelessness of success.

By Act of the Partners.—1. A partnership formed for no specified time may be dissolved at any time by the withdrawal of any partner, who must give notice to his copartners of his intention.

2. If the partnership be for a fixed time, it may be dissolved before that time by mutual consent; but if a partner withdraw without the consent of his copartners, he is liable to them for the damages they may sustain thereby.

3. The expiration of the period fixed for its duration, or the completion of the enterprise for which it was formed, will effect a dissolution of the partnership.

4. The sale or transfer by a partner of his interest

in the firm dissolves it, although the other partners may accept the purchaser as a new partner at their option.

5. An assignment for the benefit of creditors executed by the firm, or the sale or total destruction of all its property in which it dealt, will dissolve the partnership.

6. Prior to the enactment of the married women's property acts, the marriage of a female partner dissolved the partnership; and even under those statutes the marriage of copartners dissolves the firm.

Notice of Dissolution.

Except in cases of dissolution by act of law, partners must give notice of the same; otherwise, they may be bound to third parties who subsequently give credit to any of the former partners in the belief that the partnership still exists.

Actual notice must also be given to former creditors either personally or by mail; and there should also be a general notice by publication in a newspaper at the place where the business was carried on.

Effect of Dissolution.

The dissolution of the partnership terminates the authority of each partner to contract for the firm with regard to any new business.

But the partners may continue to collect and pay the debts and complete any unfinished contracts of the firm, and thus wind up its affairs.

Distribution of Assets.

The assets of a partnership are distributed in the following order:

1. Payment of debts due third parties.

If the partnership property be insufficient to pay such debts in full, the creditors are paid *pro rata,* and must then seek satisfaction from the individual property of the partners, if any there be.

2. Repayment of advances made to the firm by any partner.

3. Repayment to each partner of his share of the firm's capital, according to the terms of the articles of partnership. Should the assets prove insufficient, *pro rata* shares to be repaid.

4. Distribution of any surplus remaining after the above payments are made, in the manner and proportions prescribed by agreement.

Limited Partnerships.

In some states there are statutory enactments providing for partnerships in which there may be general partners with unlimited liability, and special partners whose liability is limited upon compliance with certain requirements.

There are also joint-stock companies in which the liability of all the partners is limited. These differ but little from corporations.

"The importance of a healthy public sentiment that shall desire, and seek to obtain, statutory unity, rather than diversity in matters of common interest to all, cannot be overestimated.

"In order that the voice of law may produce harmony, it should sound one mandate, alike applicable to the peoples of all the states, banded under one flag for a single destiny. Personal desire, local, sectional, or state jealousies or pride should give way before the furtherance of the general welfare."

—John C. Richberg,
Illinois Commissioner on Uniform State Laws.

CHAPTER VII.

CORPORATIONS.

Definitions, etc.—A corporation is an aggregation or combination of two or more persons, authorized by law to do business as an individual, and to exercise such rights as individuals have singly, but which would be difficult for several individuals to assert toward a common end unless acting in unison through organization.

Another definition of a corporation is as follows: "A body corporate, formed and authorized by law to act as a single person; a society having the capacity of transacting business as a single individual."

Rights Derived from the State.—Originally all corporations existed by favor of the king. Charters, or corporate rights, were largely granted to favorites of the monarch, to engage in adventures which promised profit and which were either too large or too risky for individuals to undertake as such.

In the United States the right to grant charters to corporations was vested in the various states as the sovereign authority within their respective jurisdictions. The states also have the right to prescribe regulations under which the business of corporations shall be conducted.

Diversity of State Laws.—There has long been a wide diversity in the laws of the various states regarding corporations. This has frequently caused incon-

venience and trouble to corporate bodies seeking to do an interstate business and also to abuse of corporate privileges and powers by the unscrupulous.

In recent years a determined effort has been made to secure uniformity of state laws respecting corporations. This effort has crystallized in a "Draft of an Act to Make Uniform the Law of the Incorporation of Business Corporations," prepared under the direction of the Commissioners on Uniform State Laws, in National Conference.

This tentative act really embodies in a large measure the actual law of Corporations, as it stands at present in most of the jurisdictions of the United States. Its provisions are therefore given below, with annotations that show wherein existing state statutes differ from the main provisions of the uniform draft.

The business student is also referred to the valuable work on "Corporations: Organization, Finance and Management," by William J. Jackman, where the subject of Federal regulation is discussed.

Draft of Uniform Business Corporation Act.

[NOTE.—When the "common law" is referred to in the notes to any of the sections of this Draft, what is meant thereby are those principles, usages and rules of the law of corporations which do not rest for their authority upon any expression and positive declaration of the will of the legislature.

The work referred to in the notes as "Frost" is that entitled "Incorporation and Organization of Corporations."]

SECTION 1. *Persons Who May be Incorporators.*—Three or more natural persons of full age, two-thirds of whom are citizens of the United States, may become a stock corporation for any lawful business purpose or purposes, except banking, insurance, brokerage, loaning money, public service, or any business which shall need to condemn lands or occupy highways.

[NOTE.—Three or more incorporators are required in all except the following states: Iowa and Nebraska, one; Arizona, Georgia, Mississippi, South Carolina and Washington, two; Hawaii, Kansas, New Hampshire, Ohio, Tennessee, Utah, Vermont, West Virginia, five.

Requirements exist in fourteen states and territories that at least one incorporator shall be a resident thereof, but the constant tendency of recent laws has been to do away with this restriction. As this act provides so easy a means for the obtaining of a license to do business by a foreign corporation formed under its provisions, such a requirement seems unnecessary.

Even in states where the statute does not limit incorporators to *natural* persons, the word "persons" does not include corporations. (C. R. R. of N. J. *vs.* P. R. R. Co., 31 N. J. Eq. 475; Factors' and Traders' Ins. Co., *vs.* Co., 37 La. An. 233.)

Only a few states, notably, Alabama, Virginia and West Virginia, permit the special classes of corporations excluded from incorporating under this act to incorporate under their Business Corporation Law. Such corporations require special provisions which are provided in most jurisdictions. In Georgia, Indiana, Michigan,

Pennsylvania, Tennessee and Texas, different kinds of business are classified in the statute, and generally incorporation for business purposes, including more than one class, is forbidden.]

SEC. 2. *Articles of Incorporation.*—Incorporation shall be accomplished upon the issuance of a certificate of due incorporation by the Secretary of State, after all taxes required by law shall have been paid, and articles of incorporation signed and sealed by each of the incorporators and acknowledged as a deed, shall have been filed, stating in the English language:

I. The name of the corporation, which shall not be the same as nor similar to any other domestic or foreign corporation admitted to do business in this state, and shall be such as to indicate that it is a corporation as distinguished from a natural person or partnership.[1]

[N. B.—The small figures refer to corresponding numbered paragraphs in the Note following this section of the Act.]

II. The purpose or purposes for which it is to be formed.[2]

III. The amount of capital stock, which shall not be less than $2,000 nor more than $25,000,000, fifty per cent of which must be subscribed before the filing of the certificate, and what proportion, if any, is preferred stock.[3]

IV. The number of shares of which the capital stock shall consist, each of which shall not be less than $10 nor more than $100.[4]

V. The location of its principal business office, which shall be within this state.[5]

VI. The period of duration, if limited.[6]

VII. The number of its directors, which shall not be less than three nor more than thirteen, with the names

and postoffice addresses of those elected to serve for the first year, or until their successors are elected.[7]

VIII. The names and postoffice addresses of the subscribers of the certificate and a statement of the number of shares of stock which each agrees to take in the corporation.[8]

The certificate may contain any other provision for the regulation of the business and conduct of the affairs of the corporation, and any limitation upon its powers, and upon the powers of its directors and stockholders which does not exempt them from an obligation nor from the performance of any duty imposed by law, nor provide for the holding of stock in other corporations.

[NOTE.—There is little variance between the requirements of the laws of the different states as to the filing and contents of the certificate.

In twenty-nine states, the state officials have statutory authority to issue certificates of due incorporation, which is practically a final adjudication against all except the state that the corporation has a legal existence (Frost, §6).

The general rule is that corporate existence dates from the time of filing the articles with the proper officials, and not from the time when it begins to do business. The rule is practically universal that payment of organization taxes is a condition precedent to corporate existence. (Borough of Braddock *vs.* Co., 189 Pa. St. 379; Afferton *vs.* Co., 67 Ind. 334.)

Ten states require publication of the articles, on the theory that publicity should be given to the organization of such enterprises.

If any of the matters required to be stated are omitted, the instrument is fatally defective. (Williams *vs.* Hewitt, 47 La. An. 1076.)

1. In nine states, the corporate name must end with the word "corporation," or "company," or something similar. States forbidding the use of the name of a foreign corporation lawfully doing business in the state are Connecticut, Delaware, Kentucky, Massachusetts, New York, Utah, Virginia and West Virginia. In the absence of such a provision, there is no restriction on using the name of a foreign corporation. (Lehigh Valley Coal Co. *vs.* Hamblen, 23 Fed, 225; Goodyear Co. *vs.* Goodyear Rubber Co., 128 U. S. 598; People *vs.* Home Life Assurance Co., 111 Mich. 405.)

The same reason applies to both foreign and domestic corporations, especially under this act.

The Secretary of State must decide in the first instance whether the proposed name is, or is not within the statutory prohibition. (State *vs.* McGrath, 5 S. W. 29.)

2. This must be done with reasonable definiteness. (Frost, §4.) The burden of showing that the purpose is an authorized one is on the corporation. (Indiana Bond. Co. *vs.* Ogle, 22 Ind. App. 593.)

3. Fifteen states, territories and federal districts provide for a minimum amount of capital with which the corporation can commence business, but not more than three limit the maximum. Generally, also, some provision is made for the amount which must have been either subscribed or paid in before the filing of the certificate or the commencement of business.

It is fully realized that a general limitation upon the maximum capital of corporations will introduce a new era in the history of corporation law.

In fully one-half of the states, territories and federal districts, preferred stock is expressly authorized by statute. In most of the other states, the creation of such stock is recognized without question as one of the powers of the corporation. (Frost, §26.)

4. All but two states, New Hampshire and Tennessee, require a statement of the number and par value of the shares. In thirty-six states and territories the par value may be any amount.

5. The domicile of the corporation is in the state of its origin. (Amer. Sug. Ref. Co. *vs.* Johnson, 60 Fed. 503; Chaffee *vs.* 4th. Nat. Bk., 71 Me., 514.) Its residence is in the county where its principal office is located. (McSherry *vs.* Company, 97 Cal. 637.) The location stated in the certificate is conclusive as against the corporation. (People ex rel Knickerbocker Press *vs.* Barker, 87 Hun. N. Y. 341.) The location may be changed at any time. (See infra, §6.)

6. In twenty-seven states, perpetual existence is permitted, and in eighteen where the duration is limited, there are provisions for extension. Colorado, Illinois, Louisiana, Maryland, Texas, Utah, Washington and Wyoming, are the states not permitting either. The principal reason for requiring a limitation and permitting an extension appears to be taxation. All but thirteen states require that the duration be stated in the articles.

7. More than half of the jurisdictions require the

insertion of the names and addresses of the first board of directors, while the other states require merely that the number of directors be stated.

8. This section is meant to be a requirement that the incorporators shall be stockholders. This seems to be the rule generally, though it is apparently otherwise in Oregon, Pennsylvania, South Dakota and Tennessee. (Coyote G. & Sm. Co. *vs.* Ruble, 8 Ore. 284; Densmore Oil Co. *vs.* Densmore, 64 Pa. St. 43; Singer Mfg. Co. *vs.* Peck, 9 S. D. 29; Bristol Trust Co. *vs.* Jonesboro, etc., Trust Co., 101 Tenn. 545.) Nineteen states require an affidavit to this statement.

The statutes of fourteen states contain a provision similar to the last one here provided for the regulation of the internal affairs of the corporation. This does not contain the words "creating and defining" as well as "limitation upon its powers" which are in the New Jersey statute, and are construed there to make the certificate of incorporation the equivalent of a special act of the legislature. (Ellerman *vs.* Chicago Junc. Ry., etc. Co., 49 N. J. Eq. 217; Dill on New Jersey Corporations, p. 21.)

The section as worded here is not intended to allow the insertion of any powers broader than those expressed in this act.

Where there is no statutory prohibition against the holding of stock in other corporations, and the state officials allow the insertion of a provision allowing such a power, it is valid. (Frost, §19.) This power is denied by statute in Alaska, District of Columbia and Georgia, and limited in Illinois, Indiana and Ohio.]

SEC. 3. *Subscriptions Paid in Property.*—Where subscriptions to the capital stock of a corporation organized under this act shall consist in whole or in part of property, there must appear in the articles of incorporation a description thereof, together with a statement of its fair cash value, as appraised by the directors, supplemented by affidavits of at least three disinterested persons, that they are acquainted with the said property, and that it is reasonably worth the amount in cash for which the corporation has accepted it. Stock so issued shall, in the absence of fraud, be full paid stock.

[NOTE.—Forty states and territories allow the issue of stock for services or property. The character of the property, services, or labor must be strictly such as the corporation is authorized to acquire. (Kimball *vs.* Grate Co., 69 N. H. 485.) This section is designed to adopt what is known s the "good faith" rule of valuation. A good statement will be found in Kelley *vs.* Clark, 21 Mont. 291.

Another rule, which is found well stated in American Tube & Iron Co. *vs.* Hays, 165 Pa. St. 489, takes into account the speculation value of a property, and is finding more favor with the courts, but allows too much leeway for escaping proper valuation.

The section as worded above does not allow the issue of stock for services.]

SEC. 4. *Filing and Recording Fees.*—The following fees are payable to the Secretary of State at the time of filing the articles of association:

For filing the same.....$10.00
For recording the same, per folio..... .15
For certified copy, per folio..... .15
For attaching seal to certified copy... 1.00
The county clerk's fees are:
For filing the certificate..... .06
For recording the same, per folio.... .10

SEC. 5. *Organization Tax.*—Every corporation incorporated under this act shall pay to the State Treasurer a tax of one-twentieth of one per cent upon the amount of capital stock which the corporation is authorized to have, and a like tax on any subsequent increase, which in no case shall be less than $25.00.

[NOTE.—All the states, territories and federal districts, excepting Arkansas, District of Columbia, Georgia, Oklahoma and Louisiana, impose graduated organization taxes. There is no question as to the validity thereof. (Ashley *vs.* Ryan, 49 O. St. 504; 153 U. S. 436.)]

SEC. 6. *Amendments of the Articles.*—Every corporation organized under this act, may, at a meeting of stockholders duly called for the purpose, by the vote of two-thirds of all its stock, amend its articles of incorporation in any manner conformable to the provisions of this act.

Provided, however, that the object of incorporation shall not be changed, and the capital stock shall not be increased to more than double the original amount, nor decreased to an amount less than the corporate indebtedness.

A certificate of amendment shall be filed in the same manner as the original certificate of incorporation.

[NOTE.—In a majority of states, the power of amendment is broad, though it was jealously guarded in early times. The present attitude of the courts accords. (Frost, §27.) This provision follows Ohio as to corporate purposes, and California as to decrease. The provision as to increase follows the same policy as that which limits the maximum capital stock.]

SEC. 7. *Filing with County Clerk.*—No corporation organized under this act shall commence business until a certified copy of the certificate of due incorporation shall have been filed in the office of the county clerk of the county wherein the principal place of business of the corporation is located.

[NOTE.—The purpose of this action is for the easy access of those seeking information as to the corporations. (Loverin *vs.* McLaughlin, 161 Ill., 477.)]

SEC. 8. *Restrictions upon the Commencement of Business.*—No corporation organized under this act shall incur any debts until seventy-five per cent of the amount of capital specified in the articles of incorporation shall have been paid in money or property, and unless such amount shall be paid within one year the corporation shall be *ipso facto* dissolved. Within thirty days after such payment the directors shall make a certificate of that fact, which shall be signed and acknowledged by a majority of the directors and verified by the President, or another officer, and filed in the offices where the certificates of incorporation are filed.

[NOTE.—In the majority of states, territories and federal districts there is no limit as to the amount which must be subscribed or paid in before the commencement of business; in nine, ten per cent; in four, twenty per cent; in three, $1,000; in one, one quarter of the capital stock; in one, fifty per cent; in one, $2,000; in one, $500. Washington, Illinois and Missouri require subscriptions to the full amount of the authorized capital stock as a condition precedent.]

SEC. 9. *Powers of Corporations in General.*—Every corporation created under the provisions of this act shall have power:

I. To have succession by its corporate name for the time stated in its certificate of incorporation, and when no period is limited, it shall be perpetual.

II. To sue and be sued by its corporate name in any court of law or equity.

III. To make and use a common seal, and alter the same at pleasure.

IV. To acquire by grant, gift, purchase and devise or bequest, and to hold and dispose of and to mortgage any such property as the purposes of the corporation shall require, subject to such limitations as shall be prescribed by law.

Provided, however, that this section shall not be construed to allow a corporation to accomplish a virtual consolidation by purchasing the entire plant of another corporation which is engaged in a similar line of business.

V. To appoint such officers and agents as the business of the corporation shall require, and to allow them suitable compensation.

VI. To make By-laws, not inconsistent with any existing law, fixing or altering the management of its property, the regulation and government of its affairs, and the manner of the certification and transfer of its stock.

VII. To wind up and dissolve itself, or to be wound up and dissolved in the manner hereinafter prescribed.

VIII. To conduct business in this state, other states, the federal districts, the territories and colonies of the United States, and in foreign countries.

[NOTE.—The general rule is that the powers of corporations organized under general statutes are such only as are conferred thereby. (Thomas *vs.* R. R. Co., 101 U. S. 71.) But the rule does not limit the common law powers of corporations, unless the statute expressly limits them. (Frost, §9.) The powers stated in this section are for the most part common law powers.

The powers not permitted or limited by this act which must be expressly granted to be exercised are: I. Consolidation with other corporations. 2. Power to appoint executive committee of directors which shall have practically the same powers as the board of directors. 3. Power to allow bondholders to vote for directors. 4 Power of minority to compel purchase of their holdings on consolidation.

Corporations also possess powers necessary to the exercise of those specifically granted. (People ex rel Tiffany *vs.* Campbell, 144 N. Y. 166.)

A provision for the publication of By-laws regulating the election of officers is not regarded as necessary, in view of Sec. 15 as to notice of stockholders' meetings.]

SEC. 10. *Issue of Stock.*—The stock of every corporation organized under this act shall be represented by certificates, the form of which shall be determined by the directors, and signed by the President or Vice-President and one other officer, and sealed with the seal of the corporation, and shall be transferable as prescribed in the following section.

[NOTE.—The relation of shareholders in a corporation is created by the subscription agreement, and it is not essential to such relation that a certificate of stock be actually issued. (Beals *vs.* Buffalo Expanded Metal Constr. Co., 49 N. Y. App. Div. 589.)

By the common law, the certificate of stock was only evidence of the ownership of shares. (Jellenik *vs.* Huron Copper Mining Co., 177 U. S. 1), but the proposed draft of the law of stock certificates aims to make the certificates to the fullest extent the representative of the shares. (See §11.)]

SEC. 11. *How Title to Certificates and Shares may be Transferred.*—Title to a certificate, and to the shares represented thereby, can only be transferred:

(a) By delivery of the certificate if indorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby.

(b) By delivery of the certificate and a separate document containing a written assignment of the cer-

tificate, or a power of attorney to sell, assign or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person.

The provisions of this section shall be applicable, although the charter or articles of incorporation or code of regulations or By-laws of the corporation issuing the certificate, and the certificate itself provide that the shares represented thereby shall be transferable only on the books of the corporation, or shall be registered by a registrar or transferred by a transfer agent.

[NOTE.—The provisions of this section are in accordance with the existing law (see Cook on Corporations, Section 373 *et seq.*), except that the transfer of the certificate is here made to operate as a transfer of the shares, whereas at common law it is the registry on the books of the company which makes the complete transfer. The reason for the change is in order that the certificate may, to the fullest extent possible, be the representative of the shares. This is the fundamental purpose of the whole act, and is in accordance with the mercantile usage. The transfer on the books of the corporation becomes thus like the record of a deed of real estate under a registry system.

This section and the above paragraph of this note is taken from the Law of Certificates of Stock.

There would seem to be no necessity for having such a section in the law in states where the proposed Law of Certificates of Stock is adopted.

As §3 of the Fourth Draft of the Law of Certificates of Stock provides, the corporation is protected in treating the person registered on its books as owner, as the owner in every way.]

SEC. 12. *Transfer of Stock by Stockholders Indebted to the Corporation.*—If a stockholder shall be indebted to the corporation, the directors may refuse to consent to the transfer of his stock until such indebtedness is paid, provided a copy of this section is written or printed upon the stock certificate.

[NOTE.—In the absence of such a provision, the corporation has no lien which it can enforce, and no authority to make a By-law embodying a similar provision. (Driscoll *vs.* West, etc., Co., 59 N. Y. 96.)

This accords with §15 of the proposed Law of Certificates of Stock.]

SEC. 13. *Provision for Payment or Forfeiture.*—Subscriptions to the capital stock of a corporation shall be paid at such times and in such installments as the By-laws may provide, unless otherwise provided by this act. If default shall be made in the payment of any installment as thereby required, the board of directors may declare the stock and all previous payments thereon forfeited for the use of the corporation, after the expiration of sixty days from the service on the defaulting stockholder, personally or by mail directed to him at his last known postoffice address, of a written notice requiring him to make payment within sixty days from the service of the notice, at a place specified therein, and

stating that, in case of failure to do so, his stock and all previous payments thereon will be forfeited for the use of the corporation.

Such stock, if forfeited, may be reissued, or subscriptions therefor may be received, as in the case of stock not issued or subscribed for.

[NOTE.—All the states, except Arizona, Iowa and Louisiana, have similar provisions.

When stock is declared forfeited, the liability of the holder thereof to the corporation for further payment thereon ceases. (Mills *vs.* Stewart, 41 N. Y. 384.)

The remedy by forfeiture is cumulative. (B. & N. Y. C. R. R. Co. *vs.* Dudley, 14 N. Y. 336.)]

SEC. 14. *Organization Meeting.*—The first meeting of every corporation shall be called within the state by any two of the stockholders named in the articles of incorporation, upon not less than thirty days' prior personal notice, as prescribed in the following section, to each of the incorporators.

Provided, however, that such meeting shall be held within two years after the filing of the articles of incorporation, or the corporation shall be *ipso facto* dissolved.

[NOTE.—Incorporators' meetings are by the common law required to be held in the state of incorporation. (Miller *vs.* Ewer, 27 Me. 509; Hilles *vs.* Parrish, 14 N. J. Eq. 380.) The statutes of several states, among them New Jersey, Maine, Massachusetts and Minnesota, contain provisions varying or enacting the common law on this point.]

SEC. 15. *Stockholders' Meetings.* — Stockholders' meetings shall be held annually, within ninety days of the end of the fiscal year of the corporation, at the principal place of business of the corporation, and notice thereof must be delivered personally, or by depositing in the postoffice, properly addressed, to each stockholder at least thirty days before such meeting. And at least three days before such meeting, a complete list of the stockholders entitled to vote shall be opened to inspection at the place of such meeting. Notice of all other stockholders' meetings shall be given in like manner.

[NOTE.—Alaska, Arizona, Delaware, Iowa, Minnesota, Nebraska and Utah require that the date of the annual meeting shall appear in the articles. The right to vote is determined by the transfer books.]

SEC. 16. *Right to Vote.*—Each stockholder shall at every stockholders' meeting be entitled to one vote in person or by proxy for each share of the capital stock held by him, and whenever more than one-fourth of said capital stock shall be owned or controlled by any one person, the stockholders shall have the right of cumulative voting in the elections of officers or directors.

Provided, however, that no stockholder shall be proxy for another, and no one person shall be proxy for more than one stockholder.

[NOTE.—Voting by proxy was not allowed at common law, and it must be recognized by statute or in the By-laws to be available. (Harvey *vs.* Company, 118 N. C. 693; People *vs.* Crossley, 69 Ill. 195.)

The right to cumulative voting, affording the minority stockholders an opportunity for representation on the board of directors, is conferred by statute in twenty-five jurisdictions.

This section by implication forbids the voting of bondholders, which is permitted by the Virginia and Delaware statutes. (*Cf.* Durkee *vs.* People, 155 Ill. 354.)]

SEC. 17. *Shares Held by the Corporation.*—Shares of the capital stock of the corporation belonging to the corporation shall not be voted upon either directly or indirectly.

[NOTE.—Corporations have implied power to purchase their own stock, provided that it is done in good faith, and without prejudice to the rights of creditors. Eight states limit the power of purchase by statute. (*Cf.* Hall & Farley *vs.* Henderson, 126 Ala. 449; New Eng. Trust Co. *vs.* Abbott, 162 Mass. 143.)]

SEC. 18. *Liability of Stockholders.*—Every holder of the capital stock of a corporation shall be personally liable to the creditors of the corporation to an amount equal to the amount unpaid on such stock, and at all times for any excess of debts over the amount of the paid-in capital stock, and such holder shall remain jointly and severally liable, as provided above, with the person to whom he transfers such stock, until the same is full paid. And all the stockholders shall be jointly and severally liable for all debts due and owing to laborers or servants or employees, other than contractors, provided written notice of intention to enforce such liability is given within thirty days after the termination of the services rendered.

[NOTE.—The tendency of modern legislation is to do away with all burdensome restrictions and obligations upon stockholders. If the section as to the amount of capital which must be paid in before the commencement of business is changed so as to require that all the authorized capital be paid in, a large part of this section will be unnecessary, unless it is desired to make the stockholders still further liable.

Stockholders were liable for unpaid subscriptions at common law, but the statutory liability varies. Four states make the original subscriber alone liable; six states make both the original subscriber and the transferee liable; four states make the original subscriber liable upon default of the transferee; eight states make stockholders liable for debts contracted while they remain such (which is the provision of the N. Y. statute, and must be rather difficult to apply in practice); twenty-six states discharge the transferor and make the transferee alone liable. Double liability now exists only in California and Minnesota. Ten states have provisions making the stockholders liable for the wages of employees.

The provision making the transferor liable is inserted to prevent transfers for the purpose of escaping liability.]

SEC. 19. *Limitation.*—No action shall be brought against a stockholder for any debt of the corporation, until judgment has been recovered against the corporation, and an execution returned unsatisfied in whole or in part.

[NOTE.—Failure to perform this condition precedent can be excused only in case of impossibility. (United Glass Co. *vs.* Vary, 152 N. Y. 121.)]

SEC. 20. *Directors.*—The business of every corporation organized under this act shall be managed by a board of not less than three nor more than thirteen directors, each of whom shall own in his own right at least three shares of the capital stock, who shall be elected at the first stockholders' meeting, and at least one-fourth in number annually thereafter, and shall hold office until their successors are respectively chosen.

[NOTE.—The number of directors may be changed with the limits indicated. (See §6.)

The election of a disqualified person to the office is ineffective. (In re Newcombe, 42 N. Y. St. Rep. 442.) As soon as a director parts with all beneficial control over his stock and causes the corporate officers to have knowledge of the fact, he ceases to be a director. (Chem. Nat. Bk. *vs.* Colwell, 132 N. Y. 250.)

Classification of directors is permitted in seventeen states.]

SEC. 21. *Officers.*—The directors may appoint from their number a President, and may also appoint a Secretary and a Treasurer and other officers, agents and employees, who shall, respectively, have such powers and perform such duties as may be prescribed in the By-laws, and may be removed at the pleasure of the directors.

[NOTE.—There must be at least two officers. (See §10.) The President is the only one who must be

chosen from among the directors, and consequently be a stockholder. If the Vice-President is empowered to act in place of the President, he also should be a stockholder.]

SEC. 22. *Liability of Directors.*—If the indebtedness of any corporation organized under this act shall exceed the amount of its paid-in capital stock, or if stock or bonds be issued for property at more than cash value, or if any dividends or other distribution of the assets be made other than from net profits, or if a reduction of capital be made under the guise of a loan to stockholders, or if any report or statement or public notice shall not be made as required by law, or, if made, shall be false in any material representation, the directors of such corporation assenting thereto shall be jointly and severally liable to the creditors of the corporation for any loss or damage arising therefrom, and in the case of reports, statements and public notices required by law, the officers shall be jointly and severally liable with the directors, as provided above.

[NOTE.—In twenty-two commonwealths the amount of indebtedness of the corporation is actually or impliedly limited.]

SEC. 23. *By-Laws.*—The stockholders of any corporation formed under this act shall have power to make such By-laws as they deem proper for the management of the affairs of the company, not inconsistent with the provisions of this act, or of other existing laws.

SEC. 24. *Corporate Records.—Books.*—Every corporation organized under this act shall, under penalty

of $50, recoverable by an aggrieved creditor or stockholder, for every day it shall neglect or refuse so to do, keep at its office within the state correct books of account of all its business transactions, and also a stock book which shall be open daily at least three hours for inspection, containing an alphabetical list of the stockholders of the corporation, showing their places of residence and the number of shares held by them respectively, and when they respectively became the owners thereof, and the amount paid thereon.

[NOTE.—The common law rights of stockholders to an inspection of books is left unimpaired. (Matter of Steinway, 159 N. Y. 250.) There are similar statutes in all but five states.]

SEC. 25. *Semi-Annual Reports.* — Every corporation authorized under this act to do business in this state shall, semi-annually, during the months of January and July, file with the Secretary of State and publish a report made and verified by the President, or Treasurer, which shall state:

I. The amount of its capital stock and the proportion actually issued.

II. The amount of its debts.

III. The amount of its assets.

IV. The names and addresses of all the directors and officers of the company, and in the case of a foreign corporation, the name also of the person designated as the person upon whom process against the corporation may be served within the state.

If any report be not made and filed as prescribed in the preceding section, such officer who shall thereafter

neglect or refuse to make and file such report, within ten days after a written request so to do shall have been made by a creditor or a stockholder of the corporation, shall be under penalty of fifty dollars, recoverable by such aggrieved creditor or stockholder, for every day he shall so neglect or refuse.

[NOTE.—In thirty-three states annual reports are required from domestic corporations. As this act is designed to put all corporations doing business in the state on an equal footing, they are all to be treated alike, whether domestic or foreign. This section calls not merely for filing but for publicity.]

SEC. 26. *Foreign Corporations; Privilege of Doing Business.*—Any corporation formed in any state or territory of the United States, under this business corporation law, shall be entitled, upon filing with the Secretary of State and with the County Clerk of the county where its principal place of business within the state is located, a certified copy of its certificate of incorporation, a copy of its By-laws, the appointment of an agent upon whom service of process may be made, together with the designation of a place of business within this state where such agent may be found, and upon the payment of all taxes required by law, to a certificate authorizing it to exercise the same powers, rights and privileges as are accorded to domestic corporations.

Provided, however, that no such authority shall be granted to any foreign corporation having the same name, or one so nearly resembling it as to be calculated to deceive, as that of any corporation already authorized to do business within this state.

SEC. 27. *Foreign Corporations not Organized Under this Act.*—Any corporation formed in any state or territory or federal district of the United States for the purpose of carrying on a business authorized by this act, under any statute other than this business corporation law, shall not be entitled to do business in this state.

[NOTE.—This is a necessarily drastic provision. Nothing less severe seems practical.]

SEC. 28. *Penalty.*—Any foreign corporation, or the agent of any foreign corporation, that shall transact any business within the limits of this state without first having complied with the provisions of this act contained in the preceding sections, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than $100 nor more than $500 for each and every offense, and no such foreign corporation shall maintain any actions in the courts of this state.

[NOTE.—The provision as to the bringing of actions applies to the assignee of the corporation (Kinney *vs.* Reid Ice Cream Co., 57 N. Y. App. Div. 206), but not to causes of action assigned to the corporation. (O'Reilly, Skelly & Fogarty Co. *vs.* Greene, 18 N. Y. Misc. 423; *Cf.* generally, Frost, §129, on the subject of what constitutes doing business in the state.)]

SEC. 29. *Legislative Investigation.*—The affairs and conditions of any corporations in this state may at all times be examined by any committee appointed by either branch of the legislature, and for that purpose all necessary oaths may be administered to the directors, officers and stockholders of such corporation, and they

may be examined on oath in relation to the affairs and conditions thereof; and such committee may examine the safes, books, papers and documents belonging to such corporation, or pertaining to its affairs and conditions, and compel the production of all keys, books, papers and documents by summary process, to be issued on application to any judge of any court of competent jurisdiction, under such rules and regulations as the court may prescribe.

[NOTE.—The statutes of seven states contain similar provisions. This is taken from the South Dakota statute.

Such inquiry has been held not to constitute a judicial act, and is therefore constitutional. (Lothrop *vs.* Stedman, 42 Conn. 583.)]

SEC. 30. *Voluntary Dissolution.* — A corporation which desires to close its affairs, may, unless otherwise provided in the certificate of incorporation, by the vote of two-thirds of all its stock and a majority of its directors, authorize a petition for its dissolution, to be filed in any court of competent jurisdiction, setting forth in substance the grounds of the application, and the court, after notice to parties interested and a hearing, may decree a dissolution of the corporation.

[NOTE.—This follows the view that the charter is in one sense a contract between the incorporators and the state, and that the latter should therefore have a hand in its extinction.]

SEC. 31. *Involuntary Dissolution.*—In either of the following cases, an action to procure a judgment dis-

solving a corporation created by or under the laws of the state, and forfeiting its corporate rights and franchises, or its license to do business within the state, if it be a foreign corporation, may be maintained by the Attorney-General in the name and in behalf of the people, or by a creditor or stockholder upon proof to the court that the Attorney-General omits for sixty days after the submission of a verified statement of facts to maintain such an action:

1. Where the corporation has remained insolvent, evidenced by a return of no property found on execution, for at least one year.

2. Where it has neglected or refused for at least one year to pay and discharge its notes or other evidences of debt.

3. Where it has suspended its ordinary and lawful business for at least one year.

4. Where it is a party to an illegal combination in restraint of trade.

5. Where penalty is dissolution.

[NOTE.—Courts of equity have no inherent jurisdiction in the absence of statute conferring the same, to decree a dissolution of a corporation or declare a forfeiture of its charter on any grounds. (Deneke *vs.* Co., 80 N. Y. 599.)

The principal grounds under the statutes upon which charters will be forfeited are:

1. Non-user of corporate franchises.

(a) Failure to organize within the time limited.

(b) Failure to carry on business.

(c) Failure to elect officers.

(d) Failure to maintain domiciliary office.

(e) Failure to commence business within the time limited.

2. For misuse or abuse of corporate powers. There must be an abuse of trust. (People *vs.* Co., 121 N. Y. 582.)

3. Non-performance of conditions precedent.

4. Non-performance of conditions subsequent.

5. Violation of express statute (anti-trust).

6. Non-payment of taxes.

7. Insolvency.]

SEC. 32. *Effect of Dissolution.*—A corporation so dissolved shall be held to be extinct in all respects as if its corporate existence had expired by the limitation of its charter. Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three years after the time when it would have been so dissolved, for the purposes of prosecuting and defending suits by or against it, and of enabling it gradually to settle and close its affairs, to dispose of and convey its property, and to divide its capital stock, but not for the purpose of continuing the business for which it was established.

SEC. 33. *Interpretation Shall Give Effect to Purpose of Uniformity.*—This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

[NOTE.—This section accords with the Sales Act, the Warehouse Receipts Act and Law of Certificates of Stock, in order to induce courts, so far as possible, to consider the object of uniformity.]

SEC. 34. *Rule for Cases not Provided for by this Act.*—In any case not provided for in this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern.

[NOTE—A similar provision is commonly inserted when an attempt is made to reduce to statute form a topic of the law, as in the Negotiable Instruments Law, the Sale of Goods Act, the Warehouse Receipts Act and the Law of Certificates of Stock.]

SEC. 35. *Definitions.*—In this act, unless the contrary intentions appear, the "capital stock" of a corporation is the aggregate amount of the funds to be combined for the doing of business under its charter.

The expression "cumulative voting" means that method of voting which allows each stockholder as many votes for directors as equal the number of shares he owns multiplied by the number of directors to be elected.

A "creditor" of a corporation is one who has a right by law to demand either presently, or upon some future contingency, the fulfillment of any obligation or contract.

A "domestic corporation" is one formed under the laws of this state, or one formed under the laws of the

United States and located in this state. Every other corporation is a "foreign corporation."

The "fair cash value" of property is such a price as honest and impartial men naturally and reasonably will pay at the given time for the property in question.

An "incorporator" is one of the subscribers of the articles of association and capital stock.

A "share of stock" is the right which the owner has in the management, profits and ultimate assets of the corporation.

A "stockholder" is the owner of a share or shares of the capital stock.

The expression "transact any business within the limits of this state" includes every transaction in this state by the agents of a corporation which does not involve interstate commerce.

SEC. 36. *Inconsistent Legislation Repealed.*—All acts or parts of acts inconsistent with this act are hereby repealed.

SEC. 37. *Time When Act Takes Effect.*—This act shall come into operation on the.....day of..... one thousand nine hundred and.....

SEC. 38. *Name of Act.*—This act may be cited as the Business Corporation Act.

TRUSTS.

The term "trust" is applied to any one of various trade combinations, as follows:

1. A central committee or body of men to whom is delegated, as a corporate or proxy trust, the voting and

other powers of the several corporations they represent, for the purpose of exercising a common authority in regulating and controlling the supply, price, use, or disposal of some kind of goods or personal property, usually manufactured products.

It has been held, in law, that where corporations, acting officially or through their stockholders, transfer their property and business to trustees to be managed for them, they exceed their lawful powers.

It was this surrender by corporations of the power of individual corporate action, while retaining their corporate or individual existence, and while held responsible by the state as acting corporate bodies, that brought about the legal dissolution of numerous trusts of this character in the United States, notably the Sugar trust in New York and the Northern Securities Co. in Minnesota; but many such combinations have been reorganized under other forms, notably the Sugar trust, which reorganized under the New Jersey laws.

This form of trust, or any combination employing unfair or surreptitious methods to raise prices, or to obstruct, by exclusive control, the ordinary course of trade, or which tends to create a monopoly, or is a conspiracy in restraint of trade, is obnoxious to law, as shown by act of Congress, July 2, 1890, by adverse legislation in many of the states, and by the United States Supreme Court decision March 14, 1904, in the Northern Securities Co. case.

2. A combination of interests in the form of a company, organization, or association, holding a controlling share of the stock of several smaller corporations en-

gaged in the same or allied branches of business or industry, a majority of the stock in each of the component corporations being transferred to a central committee or board of trustees, in whom the supreme authority is vested, and who, while issuing to the stockholders certificates showing their individual interests and rights to dividends, use the voting power of the stock in electing boards of directors for the various associated corporations, and in any other way that may be deemed judicious, thus directing their policy for the common object of unifying management, suppressing or lessening competition, regulating prices and output, cheapening cost of production, expanding business, and increasing profits.

"The price fixed by the *trust* has no relation to supply and demand; it is simply the result of an arbitrary decree."—Chicago Record-Herald, March 24, 1904.

3. A consolidation or combination of several individuals, companies or corporations engaged in or pursuing the same or allied branches of business or industry, into one corporation, which becomes the absolute owner of the stock, properties, and interests of the component companies or corporations, new stock certificates and bonds being issued in accordance with the capitalization, the policy, and the scope of the new organization, and the general affairs of which are administered by one centralized management consisting of a board of directors and executive officers, whose object is to expand business and increase profits by lessening or eliminating competition, lowering the cost of production, and regulating the amount produced; a single corporation owning or controlling most, if not all, the in-

dividuals, companies, or corporations engaged in the same or an allied branch of industry, including their stock, properties, and appurtenances.

"This combination (the Northern Securities Co.) is, within the meaning of the act, a *trust,* but if not, it is a combination in restraint of interstate and international commerce, and that is enough to bring it under the condemnation of the act."—U. S. Supreme Court decision, March 14, 1904.

"Every contract, combination in the form of *trust* or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal."—Act of Congress.

"As corporations are combinations of individuals we now have *trusts,* which are combinations of corporations, and a great part of many industries is now carried on under one general management."—Prof. Ely.

By some writers, commercial trusts have been divided into three classes: First, the trusts that are (or were) trusts, namely, the corporate or proxy trusts which exercised the voting and other powers of the several corporations they represented, while the latter retained their separate corporate existence, with amenability to the laws of the states in which they were situated; second, trusts that control various corporations by ownership of a majority of the stock in each; third, trusts in which the dominant organization is the actual owner of the stock and properties of the component corporations. It is also contended that the word *trust* is a misnomer, the word *combination,* or the phrase *consolidated companies,* with few exceptions, more exactly expressing the real nature of these organizations; but as

there is no other single word that conveys the exact idea to the average mind, the word trust, formerly used to express a similar idea, has been commonly chosen as a term to cover all such associations.

The Standard Oil Company, commonly referred to as the Standard Oil *trust,* is called the original industrial trust of the United States. It was formed because the federal form of government made some such organization necessary for the efficient conduct of a consolidated business in the various states of the Union. The Standard Oil Company wanted to do business in all parts of the country, but a corporation of one state can do business in another state only as permitted by that state. Hence, the oil company formed corporations in various states, so as to be under the separate law of each, to be responsible under it and be protected by it; whereupon these separate state corporations turned over their powers to the central trust that was formed to receive them and operate them all as a single company.—Webster's Imperial Dictionary.

CHAPTER VIII.

LANDLORD AND TENANT.

Definitions, etc.—A landlord is an owner of real property who lets or rents it to some other person. Such renting establishes the relation of landlord and tenant.

The owner becomes known to the law as the landlord or *lessor* and the person to whom the premises are let is the tenant or *lessee.*

The written evidence of the relation of landlord and tenant is called a *lease.* This is in the nature of a contract by which the temporary use and possession of lands and buildings is granted by one person to another.

The charge which the landlord makes for the use of the property is called the *rent.*

When Lease Must Be in Writing.—Under the Statute of Frauds a lease of land, etc., for more than one year must be in writing. If it is made orally it creates only a *tenancy at will.*

A lease is usually made for a certain length of time, with or without a privilege of renewal at the end of the term. Dwelling houses are usually rented for one year, with rent payable quarterly or monthly. Leases for one year or less may be oral.

A lease carries with it to the tenant everything belonging to the landlord which is necessary for the proper use and enjoyment of the property rented. Thus, when the words *house, farm, store,* or *building* are used

in a lease they pass to the tenant everything that is usually meant by them, unless the property is specially defined in the lease.

The lease is ordinarily signed by both parties and should always be executed in duplicate, so that each party may have a copy.

Form of Lease.

A form of lease will be found in the section devoted to Legal Forms.

In some jurisdictions a uniform form of lease has been adopted, as in the city of Chicago, for the renting of houses, flats, etc.

The lease should recite the names of the parties, the date for beginning the lease of the premises, and the title which the lessor has in the property. It should then state the consideration, or rent, to be followed by the words which give effect to the lease. "Grant, demise and let or lease" are words commonly used. Then comes a description of the premises.

The lease should also provide for its forfeiture on non-payment of the rent or other breach of the covenant. This will enable the landlord to re-enter the premises and eject the tenant in case of such breach, and by due process of law.

The *term* of the lease is usually a matter of agreement between the parties and may as a rule be as long or as short as they please. In some states, however, there are statutory limitations, as in New York, where a lease of farm lands is not legal for more than twelve years.

When the term is not specified in the lease, the law usually presumes that it was a renting from year to

year, and the landlord cannot remove the tenant until the expiration of a year.

Rent may be made payable at such times as the parties agree upon, but except in cases of farm lands, it is as a rule made payable monthly. In such cases it does not become due until the end of the month, unless there is a special provision in the lease making it payable in advance.

In the absence of any agreement as to rent, the law will give the landlord a reasonable compensation as against a tenant in possession.

Lessor's Rights.

The landlord has the right to insist upon the performance of all the conditions of the lease.

He may prevent the tenant from doing anything that will permanently injure the property, but has no right to interfere with the proper use of the premises by the tenant.

If the rent is not paid or the tenant does not surrender possession at the expiration of the term of the lease, the landlord may, under the laws of most of the states, recover possession of the premises by summary proceedings. Ordinarily a tenant may be thus removed within two or three days.

Formerly, in case of non-payment of rent, the landlord could seize any personal property of the tenant found on the premises, in order to enforce payment. But this process, called *distress for rent,* is not now generally allowed, having been replaced by the remedy of eviction by summary proceedings.

In making a lease, the landlord parts only with the right to possession. He still retains title to the premises and may mortgage or sell them while a tenant is in possession. But the mortgagee or vendee takes subject to the tenant's rights.

Lessee's Rights.

The rights of a tenant under lease include the peaceable possession and enjoyment of the premises. The landlord has no greater right of entry without permission of the tenant than a stranger, unless the privilege is specially reserved in the lease.

If a tenant rents property already covered by a mortgage, and the mortgage is foreclosed, the tenant may be removed, even though his lease has not expired. But in such a case the tenant is relieved from his agreement to pay rent to the landlord.

The tenant has a right to use the property in any proper manner. He may also sell his leasehold interest, in the absence of any agreement to the contrary in the lease. He may sublet or assign his lease—but in either case he is not relieved from his liability to the landlord.

A clause is often inserted in leases, whereby the tenant agrees not to sublet the premises or any part thereof, or to assign the lease without the consent of the landlord.

In some states it is provided by statute that the tenant shall not sublet without the consent of the landlord, if the lease is for a short term, say two or three years.

Repairs.

As a general rule, the landlord is not bound to make repairs, unless there is a special agreement binding him

to do so. If repairs are needed the tenant must make them at his own expense or do without them. When such repairs are necessary to maintain the premises in as good condition as when leased, except for ordinary wear, the tenant must make them at his own expense. He must replace broken window lights, repair fences, etc.

But he need not repair damages caused by fire or other unpreventable accidents, even though he may have covenanted to make ordinary repairs.

Fixtures.

Such things as are attached to the premises by the tenant, with a clear intention to remove them at the expiration of his lease, may be taken away by him when he leaves. But things which are regarded as permanently attached cannot be taken away. The intention of the parties in the eye of the law governs these removals.

"There are several tests," says Weed, "which indicate in a general way what may be removed by a tenant. One test is, if the things are fastened with screws, or in any other way, so that they can be readily removed without injury to the premises. Another test is, if by the removal of the fixtures, he can still restore the premises to the condition in which he found them. It should be said that the law is lenient to tenants, so long as they follow these reasonable rules.

"Fixtures used in trade or manufacture may almost all be removed so long as the premises can be substantially restored."

Termination of Lease.

A lease is terminated as follows:

1. At the expiration of the time fixed in it.
2. When the premises are surrendered by voluntary act of the tenant, with the landlord's consent.
3. When there is a breach of the tenant's covenant, giving the landlord under the lease a right to terminate the tenancy.
4. When the title of the landlord is extinguished.
5. In some states, by statute where the buildings on the premises are destroyed through no fault of the tenant. But at common law the destruction of the premises does not terminate the lease, except in cases where the tenant has leased only part of the building.

For general real estate law, governing ownership, recording of titles, making of conveyances, and similar matters affecting the holding or transfer of real property, see "Real Estate, Management and Transfer," by W. J. Jackman, A. B.

CHAPTER IX.

NEGOTIABLE INSTRUMENTS.

Definitions.—A negotiable instrument is a written evidence of debt which may be transferred by indorsement or delivery, giving the holder the full right to sue on the same and collect it, as if it had been made to him originally. The term is applied to all paper, that is bonds, bills of exchange or promissory notes, or drafts, or checks, payable to the order of a payee or to bearer.

"Negotiable instruments," says Professor Huffcutt, "are written contract obligations which can be transferred from hand to hand like money. They are instruments of trade or of credit, that is, they are a substitute for money or an evidence of a postponed debt. They may be issued by private persons, or by banks, or by the government."

And the same able writer cites the following examples:

1. If B buys a bill of goods of C, he may (a) pay money, which may be either coin, promises of the government to pay, or promises of a national bank to pay; (b) give a check on his bank; (c) give his promissory note; (d) accept a bill of exchange drawn on him by the seller; (e) transfer D's check, promissory note, or bill of exchange drawn or payable to his (B's) order or to bearer; (f) draw and deliver a bill of exchange on E (who owes B) payable to C's order. In any case, as

above, B has given C a negotiable instrument, except where he pays coin. But even coined money is in fact a negotiable chattel, for whatever title or want of title there may have been in B the taker of it for value gets a good title.

2. If any instrument given above is payable on demand, it is essentially an instrument of trade taking the place of money. But if it is payable at some future day it becomes essentially an instrument of credit, because B secures a postponement of the payment of his debt, that is, secures a term of credit from C. But even an instrument payable on demand is also one of credit, because until actually presented for payment it is taken on the credit of the one issuing it.

A Valuable Substitute for Money.—In general, the feature of negotiable paper which makes it valuable as a substitute for money, is the fact that, in the hands of an honest purchaser, it can be collected whether it was binding in the hands of the original holder or not. Thus a negotiable instrument given by A to B, without consideration, cannot be collected by B, but if it is bought by C he can enforce payment from A.

This peculiarity, says Fitch, in "New Commercial Law," is necessary in order that such instruments may be readily transferred; one would not care to buy a note he knew nothing about, if by some irregularity in its execution he might lose the amount it represents.

Negotiable paper is sometimes spoken of as paper that can be transferred, but this is incorrect. A debt of any kind can be transferred, and a non-negotiable note, which is merely evidence of debt, can be assigned in the same way as a debt not evidenced by writing. If

transferred, however, it gives the buyer no rights which the seller did not possess, and can be collected by him only in case it was valid in the hands of the original holder.

The Law is Exact.—The rules of law on the subject of negotiable paper are more exact and technical than those of any other branch of Commercial Law. They are stated in this chapter in the simplest language compatible with accuracy, and the rules given are those that apply in the great majority of jurisdictions in the American Union.

Form and Interpretation.

Form of Negotiable Instrument.—An instrument to be negotiable must conform to the following requirements:

(1.) It must be in writing and signed by the maker or drawer;

(2.) Must contain an unconditional promise or order to pay a sum certain in money;

(3.) Must be payable on demand, or at a fixed or determinable future time;

(4.) Must be payable to order or to bearer; and

(5.) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

Certainty as to Sum.—The sum payable is a sum certain within the meaning of the law, although it is to be paid with interest; or by stated instalments, or with exchange, or with costs of collection or an attorney's fee, in case payment shall not be made at maturity.

When Promise is Unconditional.—An unqualified order or promise to pay is unconditional within the meaning of the law though coupled with (a) an indication of a particular fund out of which reimbursement is to be made; or (b) a statement of the transaction which gives rise to the instrument. But an order or promise to pay out of a particular fund is not unconditional.

Determinable Future Time.—An instrument is payable at a determinable future time, namely:

(1.) At a fixed period after date or sight; or

(2.) On or before a fixed or determinable future time specified therein; or

(3.) On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which authorizes the sale of collateral securities, or authorizes a confession of judgment, if the instrument be not paid at maturity.

Omissions; Seal: Particular Money.—The validity and negotiable character of an instrument are not affected by the fact that:

(1.) It is not dated; or

(2.) Does not specify the value given, or that any value has been given therefor; or

(3.) Does not specify the place where it is drawn or the place where it is payable; or

(4.) Bears a seal; or

(5.) Designates a particular kind of current money in which payment is to be made.

When Payable on Demand.—An instrument is payable on demand:—

(1.) Where it is expressed to be payable on demand, or at sight, or on presentation; or

(2.) Where no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand.

When Payable to Order.—The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of:

(1.) A payee who is not maker, drawer, or drawee; or

(2.) The drawer or maker; or

(3.) The drawee; or

(4.) Two or more payees jointly; or

(5.) One or some of several payees; or

(6.) The holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.

When Payable to Bearer.—The instrument is payable to bearer:

(1.) When it is expressed to be so payable; or

(2.) When it is payable to a person named therein or bearer; or

(3.) When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable; or

(4.) When the name of the payee does not purport to be the name of any person; or

(5.) When the only or last indorsement is an indorsement in blank.

Date, Presumption as To.—Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed *prima facie* to be the true date of the making, drawing, acceptance, or indorsement as the case may be.

The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose.

Blanks; When May Be Filled.—Where the instrument is wanting in any material particular, the person in possession thereof has a *prima facie* authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a *prima facie* authority to fill it up as such for any amount.

In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time.

But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce

it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

Delivery: When Effectual: When Presumed.—Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto.

Where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

Construction Where Instrument is Ambiguous.—Where the language of the instrument is ambiguous or there are omissions therein, the following rules of construction apply:

(1.) Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount;

(2.) Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;

(3.) Where the instrument is not dated, it will be considered to be dated as of the time it was issued;

(4.) Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;

(5.) Where the instrument is so ambiguous that there is doubt whether it is a bill or a note, the holder may treat it as either at his election;

(6.) Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;

(7.) Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

Liability of Person Signing in Trade or Assumed Name.—As a general rule, no person is liable on the instrument whose signature does not appear thereon. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

Signature by Agent; Authority; How Shown.—The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

Liability of Person Signing as Agent, Etc.—Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

Effect of Indorsement by Infant or Corporation.—The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

Forged Signature; Effect of.—When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority.

Consideration.

Presumption of Consideration.—Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

What Constitutes Consideration.—Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.

Effect of Want of Consideration.—Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense *pro tanto,* whether the failure is an ascertained and liquidated amount or otherwise.

Liability of Accommodation Party.—An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

Negotiation.

What Constitutes Negotiation.—An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery.

Indorsement; How Made.—The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

Kinds of Indorsement.—An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

Special Indorsement; Indorsement in Blank.—A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.

Blank Indorsement; How Changed to Special Indorsement.—The holder may convert a blank indorse-

ment into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

When Indorsement Restrictive.—An indorsement is restrictive, which either,—

1. Prohibits the further negotiation of the instrument; or

2. Constitutes the indorsee the agent of the indorser; or

3. Vests the title in the indorsee in trust for or to the use of some other person.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

Effect of Restricting Indorsement; Rights of Indorsee.—A restrictive indorsement confers upon the indorsee the right,—

1. To receive payment of the instrument;

2. To bring any action thereon that the indorser could bring;

3. To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

Qualified Indorsement.—A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

Conditional Indorsement.—Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the in-

dorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

Indorsement Where Payable to Two or More Persons.—Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

Effect of Instrument Drawn or Indorsed to a Person as Cashier.—Where an instrument is drawn or indorsed to a person as "Cashier" or other fiscal officer of a bank or corporation, it is deemed prima facia to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.

Indorsement Where Name is Misspelled, Etc.—Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature.

Indorsement in Representative Capacity.—Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

Place of Indorsement; Presumption.—Except where the contrary appears, every indorsement is presumed prima facia to have been made at the place where the instrument is dated.

Rights of the Holder.

Right of Holder to Sue; Payment.—The holder of a negotiable instrument may sue thereon in his own name and payment to him in due course discharges the instrument.

What Constitutes a Holder in Due Course.—A holder in due course is a holder who has taken the instrument under the following conditions:

1. That it is complete and regular upon its face;
2. That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;
3. That he took it in good faith and for value;
4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

When Person Not Deemed Holder in Due Course.—Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

When Title Defective.—The title of a person who negotiates an instrument is defective when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

Rights of Holder in Due Course.—A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce pay-

ment of the instrument for the full amount thereof against all parties liable thereon.

Who Deemed Holder in Due Course.—Every holder is deemed *prima facie* to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. But the last-mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

Liabilities of Parties.

Liability of Maker.—The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse.

Liability of Drawer.—The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder.

Liability of Acceptor.—The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits,—

1. The existence of the drawer, the genuineness of

his signature, and his capacity and authority to draw the instrument; and

2. The existence of the payee and his then capacity to indorse.

When Person Deemed Indorser.—A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor, is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

Warranty Where Negotiation by Delivery, Etc.—Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:

1. That the instrument is genuine and in all respects what it purports to be;

2. That he has a good title to it;

3. That all prior parties had capacity to contract;

4. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision 3 of this section do not apply to persons negotiating public or corporation securities, other than bills and notes.

Liability of General Indorser.—Every indorser who indorses without qualification, warrants to all subsequent holders in due course:

1. The matters and things mentioned in subdivision one, two and three of the next preceding section; and

2. That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

Order in Which Indorsers are Liable.—As respects one another indorsers are liable *prima facie* in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally.

Liability of an Agent or Broker.—Where a broker or other agent negotiates an instrument without indorsement he incurs all the liabilities prescribed by statute (see section on Warranty above), unless he discloses the name of his principal, and the fact that he is acting only as agent.

Presentment for Payment.

Effect of Want of Demand on Principal Debtor.—Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But as a general rule, presentment for payment is necessary in order to charge the drawer and indorsers.

Presentment Where Instrument is Not Payable on Demand and Where Payable on Demand.—Where the

instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

What Constitutes a Sufficient Presentment.—Presentment for payment, to be sufficient, must be made:—

1. By the holder, or by some person authorized to receive payment on his behalf;

2. At a reasonable hour on a business day;

3. At a proper place as defined below;

4. To the person primarily liable on the instrument or, if he is absent or inaccessible, to any person found at the place where the presentment is made.

Place of Presentment.—Presentment for payment is made at the proper place:

1. Where a place of payment is specified in the instrument and it is there presented;

2. Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented.

3. Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;

4. In any other case, if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

Instrument Must be Exhibited.—The instrument must be exhibited to the person from whom payment

is demanded, and when it is paid must be delivered up to the party paying it.

Presentment Where Instrument Payable at Bank.—Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

Presentment to Persons Liable as Partners.—Where the persons primarily liable on the instrument are liable as partners and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

Presentment to Joint Debtors.—Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

When Presentment Not Required to Charge the Drawer.—Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

When Presentment Not Required to Charge the Indorser.—Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation and he has no reason to expect that the instrument will be paid if presented.

When Delay in Making Presentment is Excused.—Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the

control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

When Presentment May Be Dispensed With.—Presentment for payment is dispensed with:

1. Where after the exercise of reasonable diligence presentment as required by this act cannot be made;
2. Where the drawee is a fictitious person;
3. By waiver of presentment, express or implied.

When Instrument Dishonored By Non-Payment.—The instrument is dishonored by non-payment when,—

1. It is duly presented for payment and payment is refused or cannot be obtained; or
2. Presentment is excused and the instrument is overdue and unpaid.

When the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

Time of Maturity.—Every negotiable instrument is payable at the time fixed therein without grace, except where days of grace are allowed by local statute. When the day of maturity falls upon Sunday or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due or becoming payable on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.

Time; How Computed.—Where the instrument is payable at a fixed period after date, after sight, or after

the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

Rule Where Instrument Payable at Bank.—Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

Notice of Dishonor.

To Whom Notice of Dishonor Must Be Given.—As a general rule, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

By Whom Given.—The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who upon taking it up would have a right to reimbursement from the party to whom the notice is given.

Notice Given By Agent.—Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

When Agent May Give Notice.—Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal.

When Notice Sufficient.—A written notice need not be signed, and an insufficient written notice may be sup-

plemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

Form of Notice.—The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mails.

Notice of dishonor may be given either to the party himself or his agent in that behalf.

Notice Where Party is Dead.—When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

Notice to Partners.—Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution.

Notice to Persons Jointly Liable.—Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

Notice to Bankrupt.—Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.

Time Within Which Notice Must Be Given.—Notice may be given as soon as the instrument is dishonored;

and unless delay is excused as hereinafter provided, must be given within the times fixed by statute as below (Uniform Negotiable Instruments Act, Sec. 103).

Where Parties Reside in Same Place.—Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

1. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following.

2. If given at his residence, it must be given before the usual hours of rest on the day following.

3. If sent by mail, it must be deposited in the post-office in time to reach him in usual course on the day following.

Where Parties Reside in Different Places.—Where the person giving and the person to receive notice reside in different places the notice must be given within the following times:

1. If sent by mail, it must be deposited in the post-office in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter.

2. If given otherwise than through the post-office then within the time that notice would have been received in due course of mail, if it had been deposited in the post-office within the time specified in the last subdivision.

Where notice of dishonor is duly addressed and deposited in the post-office, or in any letter box under the control of the Post-office Department, the sender is

deemed to have given due notice, notwithstanding any miscarriage in the mails.

Notice may be sent either to a party's place of business or to his residence.

Notice to Subsequent Party.—Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

Waiver of Notice.—Notice of dishonor may be waived either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied.

Whom Affected By Waiver.—Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only.

Waiver of Protest.—A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor.

When Notice Need Not Be Given to Drawer.—Notice of dishonor is not required to be given to the drawer in either of the following cases:

1. Where the drawer and drawee are the same person;

2. When the drawee is a fictitious person or a person not having capacity to contract;

3. When the drawer is the person to whom the instrument is presented for payment;

4. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;

5. Where the drawer has countermanded payment.

When Notice Need Not Be Given to Indorser.—Notice of dishonor is not required to be given to an indorser in either of the following cases:

1. Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument.

2. Where the indorser is the person to whom the instrument is presented for payment;

3. Where the instrument was made or accepted for his accommodation.

Notice of Non-Payment Where Acceptance Refused.—Where due notice of dishonor by non-acceptance has been given, notice of a subsequent dishonor by non-payment is not necessary, unless in the meantime the instrument has been accepted.

When Protest Need Not Be Made; When Must Be Made.—Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as the case may be; but protest is not required except in the case of foreign bills of exchange.

Discharge of Negotiable Instruments.

How Discharged.—A negotiable instrument is discharged:

1. By payment in due course by or on behalf of the principal debtor;

2. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;

3. By the intentional cancellation thereof by the holder;

4. By any other act which will discharge a simple contract for the payment of money;

5. When the principal debtor becomes the holder of the instrument at or after maturity in his own right.

When Persons Secondarily Liable are Discharged.—A person secondarily liable on the instrument is discharged:

1. By any act which discharges the instrument;

2. By the intentional cancellation of his signature by the holder;

3. By the discharge of a prior party;

4. By a valid tender of payment made by a prior party;

5. By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved;

6. By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved.

Right of Party Who Discharges Instrument.—Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:

1. Where it is payable to the order of a third person, and has been paid by the drawer; and

2. Where it was made or accepted for accommodation, and has been paid by the party accommodated.

Renunciation By Holder.—The holder may expressly renounce his rights against any party to the instrument, before, at, or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument.

But a renunciation does not affect the rights of a holder in due course without notice.

A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

Cancellation; Unintentional; Burden of Proof.—A cancellation made unintentionally, or under a mistake or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.

Alteration of Instrument.—Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers.

But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

What Constitutes a Material Alteration.—Any alteration which changes,—

1. The date;
2. The sum payable, either for principal or interest;
3. The time or place of payment;
4. The number or the relations of the parties;
5. The medium or currency in which payment is to be made;

Or which adds a place of payment where no place of payment is specified, or any change or addition which alters the effect of the instrument in any respect, is a material alteration.

BILLS OF EXCHANGE.

Form and Interpretation.

Definition.—A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.

A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.

Inland and Foreign Bills of Exchange.—An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within the State. Any other bill is a foreign bill. Unless the contrary appears

on the face of the bill, the holder may treat it as an inland bill.

When Bill May Be Treated as Promissory Note.—Where the drawer and drawee of a bill are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

Referee in Case of Need.—The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say in case the bill is dishonored by non-acceptance or non-payment. Such person is called the *referee in case of need.* It is in the option of the holder to resort to the referee in case of need or not as he may see fit.

Acceptance.

The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill and, if such request is refused, may treat the bill as dishonored.

Acceptance By Separate Instrument.—Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

Promise to Accept.—An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who upon the faith thereof, receives the bill for value.

Time Allowed Drawee to Accept.—The drawee is allowed twenty-four hours after presentment, in which to decide whether or not he will accept the bill; but the acceptance if given, dates as of the day of presentation.

Liability of Drawee Retaining or Destroying Bill.—Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same.

Kinds of Acceptances.—An acceptance is either *general* or *qualified.* A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere.

An acceptance is qualified, which is:

1. Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;

2. Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

3. Local, that is to say, an acceptance to pay only at a particular place;

4. Qualified as to time;

5. The acceptance of some one or more of the drawees, but not of all.

The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance.

Where a qualified acceptance is taken the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto.

Presentment for Acceptance.

Presentment for acceptance must be made:

1. Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or

2. Where the bill expressly stipulates that it shall be presented for acceptance; or

3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

When Failure to Present Releases Drawer and Indorser.—Except as otherwise provided by statute, the holder of a bill which is required by the above section to be presented for acceptance must either present it for

acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged.

Presentment; How Made.—Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and:

1. Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only.

2. Where the drawee is dead, presentment may be made to his personal representative;

3. Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections seventy-two and eighty-five of this act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock, noon, on that day.

Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before

presenting it for payment is excused and does not discharge the drawers and indorsers.

Where Presentment is Excused.—Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance, in either of the following cases:

1. Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill.

2. Where, after the exercise of reasonable diligence, presentment cannot be made.

3. Where, although presentment has been irregular, acceptance has been refused on some other ground.

When Dishonored By Non-Acceptance.—A bill is dishonored by non-acceptance,—

1. When it is duly presented for acceptance and such an acceptance as is prescribed by this act is refused or cannot be obtained; or

2. When presentment for acceptance is excused and the bill is not accepted.

Duty of Holder Where Bill Not Accepted.—Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance or he loses the right of recourse against the drawer and indorsers.

Rights of Holder Where Bill Not Accepted.—When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary.

Protest.

Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

How Made.—The protest must be annexed to the bill, or must contain a copy thereof and must be under the hand and seal of the notary making it, and must specify:

1. The time and place of presentment;
2. The fact that presentment was made and the manner thereof;
3. The cause or reason for protesting the bill;
4. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

By Whom Made.—Protest may be made by,—

1. A notary public; or
2. By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

When to Be Made.—When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

Where Made.—A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business, or residence of some person other than the drawee, has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

Protest Both for Non-Acceptance and Non-Payment.—A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

Protest Before Maturity Where Acceptor Insolvent.—Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

When Protest Dispensed With.—Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

Protest Where Bill is Lost, Etc.—When a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

Acceptance for Honor.

Where a bill of exchange has been protested for dishonor by non-acceptance or protested for better security,

and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

An acceptance for honor supra protest must be in writing, and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

Where an acceptor for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

The acceptor for honor, by such acceptance, engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided also, that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given him.

Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor.

Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for non-payment before it is presented

for payment to the acceptor for honor or reference in case of need.

Presentment for Payment.—Presentment for payment to the acceptor for honor must be made as follows:

1. If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity.

2. If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in a preceding section.

The provisions of the law regarding making presentment of negotiable instruments apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

When the bill is dishonored by the acceptor for honor it must be protested for non-payment by him.

Payment for Honor.

Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.

The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment.

The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

Bills in a Set.

Where a bill of exchange is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill.

Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this rule affects the rights of a person who in due course accepts or pays the part first presented to him.

Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part

he has himself indorsed, as if such parts were separate bills.

The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

Except as otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

Promissory Notes and Checks.

Promissory Note Defined.—A negotiable promissory note within the meaning of the Uniform Negotiable Instruments Act, is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete, until indorsed by him.

Check Defined.—A check is defined as a bill of exchange drawn on a bank payable on demand. Except as otherwise provided, the provisions of the act applicable to a bill of exchange payable on demand apply to a check.

A check must be presented for payment within a reasonable time after its issue or the drawer will be dis-

charged from liability thereon to the extent of the loss caused by the delay.

Where a check is certified by the bank on which it is drawn the certification is equivalent to an acceptance.

Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon.

A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check.

Definitions of Terms Used.

The following are definitions of terms used in the law of Negotiable Instruments:

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counter-claim and set-off.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print.

Person Primarily Liable on Instrument.—The person "primarily" liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are "secondarily" liable.

Reasonable Time, What Constitutes.—In determining what is a "reasonable time" or an "unreasonable time," regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case.

Time, How Computed When Last Day Falls on Holiday.—Where the day, or the last day, for doing any act required or permitted by the law to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

The Uniform Negotiable Instruments Act recommended by the Commissioners on Uniform State Laws has been enacted in the thirty-eight (38) States and Territories of Alabama, Arizona, Colorado, Connecticut, District of Columbia, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, Ne-

vada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

It has not yet (Jan. 1, 1910) been enacted in the twelve States of Arkansas, California, Delaware, Georgia, Indiana, Maine, Minnesota, Mississippi, South Carolina, South Dakota, Texas and Vermont; in the one Territory of Alaska; in the two Insular Possessions of Porto Rico and Philippine Islands and the one Isthmian Possession of the Panama Canal Zone; a total of sixteen States, Territories, Isthmian and Insular Possessions.

The principal provisions of the Uniform Act have been included in the foregoing chapter as representative of American law on the subject of Negotiable Instruments. In some cases local statutes may be in conflict with the provisions cited, but the general rules are as stated above.

"There is a written and an unwritten law. The one by which we regulate our constitutions in our cities is the written law; that which arises from custom is the unwritten law."—Diogenes.

CHAPTER X.

COMMON CARRIERS.

Definitions, etc.—A common carrier is a person or a company that undertakes as a regular business to carry or transport persons or goods for hire.

Expresses, stages, railroads, canal boats, steamboats, teamsters, porters, ferries, and the different kinds of vessels, are examples of common carriers.

Kinds of Carriers.—Carriers may be either private, or public or common, carriers.

A *private carrier* is one who carries only occasionally and not as a public business or employment. Such a carrier is not bound to serve all who offer to employ him. He is liable for negligence in transporting the goods, but is held only to the exercise of ordinary diligence.

Public or common carriers are those whose regular business it is to carry goods from place to place for all persons who choose to employ and remunerate them, such as railroad, express, and steamship companies.

They may be carriers of *passengers* or carriers of *goods*. The term is usually applied to the latter class.

Common Carriers of Goods.

A common carrier of goods must carry for every one who desires to employ him and is ready to pay him his reasonable charge, so long as he has accommodations, and holds himself out to carry the kind of articles of-

fered. Anything which can be the subject of a bailment (see chapter on Bailments) may be carried, even live animals.

Carriers must necessarily limit the scope of their business. Thus, for example, the carrying of money is now practically confined to the express companies.

Duties of Common Carriers.

If a carrier holds himself out for general carriage, he must carry even dangerous articles if they are offered him, though he may charge extra for the risk involved.

The carrier is bound to load the goods carefully, and to carry them safely and without unreasonable delay to the designated place of delivery, and there turn them over in a sound condition to the person to whom they are directed.

He is responsible for any loss or injury whatever while the goods are in his hands, unless it is directly caused by some act of God (as lightning, floods, etc.) or by a public enemy, or by some act (such as careless packing) on the part of the sender, or by the natural deterioration or decay of the property carried.

The carrier is not excused from liability for damage or loss by accidental fires, by the violence of mobs, or by any accidents caused by human agency.

Duties of Senders.

But the sender of goods must act in good faith. He should direct the goods properly, and pack them carefully, in such a way that the carrier shall know what they are. He must also be ready to tell the carrier their real value, if asked for it.

Remuneration of Carriers.

The carrier may claim his freight in advance, or, as is usually the case, collect it at the end of the carriage. The sender, however, is the original debtor for it.

If the carrier's charges are not paid in advance, he has a lien on the property which he is carrying, for the amount of his freight. This lien disappears as soon as he has delivered the goods.

The freight charged must not be unreasonable. Efforts are now being made by local statutes, and by the Interstate Commerce Act to prevent discriminations in carriers' rates.

Duty to Deliver.

The carrier must deliver the property to the given address, unless, as in the case of railroads or vessels, it is the custom to deliver it at the freight-houses or wharf.

In some states, after the goods are unloaded in the freight-house at the journey's end, if they are not called for at once, the railroad is then only responsible for them as a simple bailee for hire. But in New York and other states, the carrier is still held to his special responsibility as a carrier until after a reasonable time for the goods to be called for.

Unless excused by some cause limiting his liability, a carrier is under an absolute duty to deliver the goods properly to the consignee or his duly authorized agent.

The question, what is a good delivery, varies with circumstances.

Express companies are generally held bound to make personal delivery. Railroads, however, are not bound, in the absence of special contract or usage, to deliver the

goods personally to the consignee at his place of residence or business, but only to deliver them upon the platform or in the warehouse at the end of the transit.

Provision of Facilities.

A common carrier is bound to provide sufficient facilities and means of transportation for all freight which it may be reasonably expected will be offered, but he is not bound to provide in advance for any unusual and unexpected rush of business.

He must provide safe and suitable vehicles for the particular kind of service he professes to perform, and must also provide suitable loading and depot facilities, including approaches, platforms, warehouses, and the like.

The carrier may refuse to receive goods not offered at a reasonable time, and may make any reasonable regulations as to the time of receiving goods, starting boats or trains, packing, and the like.

Liability and Limitations.

The carrier is not liable for loss caused by the inherent nature of the goods, as the natural decay of fruits and vegetables, evaporation and fermentation of liquids, or losses caused by the vicious nature of live stock in transit.

But he is liable for loss even as to these exempted causes, if he or his servants contributed by their negligence to the injury.

The carrier is also liable for delay which results from his negligence to transport and deliver the goods within a reasonable time.

Unless prohibited by statute, the carrier may limit his liability for loss or injury from causes over which he has no control, and not contributed to by his own fault and negligence.

Thus, in New York he may so limit his liability even for losses resulting from his own negligence and that of his agents, and in Illinois and Wisconsin as to losses caused by any negligence except gross negligence.

The contract limiting liability must be brought to the notice of the shipper and assented to by him.

Carriers of Passengers.

A public carrier of passengers is not a bailee of the passenger's person nor an insurer of their safety, but is bound to take great care for their potection.

He must use the utmost care to provide safe, sufficient, and suitable vehicles and vessels, and to have competent agents or servants, and must use such care in the management of the same as a prudent man would use, to guard against all dangers which in the usual course of things might be expected to happen.

The carrier is liable for any injury occurring through his negligence or that of his servants, and not contributed to by the passenger himself.

But he may make any reasonable regulations as to his traffic, and may refuse to receive undesirable passengers, as drunken or insane persons.

The carrier is a bailee of a passenger's baggage and is liable therefor to the same extent as in the case of other goods transported by a common carrier. As a general rule, only ordinary articles of personal use and

convenience may be carried as baggage without paying extra compensation therefor.

The carrier is liable only for negligence as to baggage retained by the passenger in his own possession, and as to baggage not called for within a reasonable time after the destination of the passenger is reached.

He is bound to afford the passenger a suitable opportunity for alighting and to keep all station premises in safe condition.

CHAPTER XI.

BANKRUPTCY.

Origin of Insolvency Laws.—At common law debtors could be imprisoned for debt, and such imprisonment might be of indefinite duration. It was not until 1759, that the English Parliament passed a general and comprehensive act for their relief. This act provided that prisoners in custody for debts under £100 (afterwards extended to £200) might secure their release by making an assignment of all their property, with some trifling exceptions, for the benefit of their creditors; the debtor, however, was not discharged from civil liability for the unpaid portion of his debts.

This was the origin of insolvency laws under which, after the abolition of imprisonment for debt, insolvent debtors continued to make assignments for the benefit of creditors in order that all might share *pro rata* in the available assets. These laws were extended in England and in some of our states so as to enable creditors to compel an insolvent to make an assignment of his property for their benefit and to give the debtor a discharge from further liability. When they reach this point they are indistinguishable from bankruptcy laws.

Bankruptcy laws.—Bankruptcy laws are older than insolvency laws, but were originally applied only to traders or persons in mercantile pursuits. They were framed to enable creditors to compel a bankrupt trader

to turn over his property for their benefit. They were extended for the benefit of the trader, so that upon turning over all his property for the payment of his debts the bankrupt became discharged from further liability and could begin business again free from the burden of former debts. They were further extended so as to apply to all persons, whether traders or not, and to enable a debtor to go into voluntary bankruptcy and secure a discharge.

Thus, by an extension of insolvency laws so as to discharge a debtor from his debts as well as from imprisonment, and by an extension of the bankruptcy laws to include all debtors, the two classes of laws became practically alike.—Huffcut.

State insolvency laws.—The American states have passed laws which sometimes resemble insolvency laws and sometimes resemble bankruptcy laws. The main distinction to be observed is whether upon assigning all his property for the benefit of his creditors the debtor is discharged from further liability for his debts then existing. If so, the law whatever it may be called, is practically a bankruptcy law; if not, it is practically an insolvency law.

Any state law which is in effect a bankruptcy law is now suspended by the National Bankruptcy Law which went into effect July 1, 1898, and was amended by Act of February 5, 1903.

Any state law which merely governs the voluntary assignment of property for the benefit of creditors, and is to that extent an insolvency law, is not suspended; but a voluntary assignment for the benefit of creditors is

an act of bankruptcy and the creditors may bring the assigning debtor under the National Bankruptcy Law if they choose.

United States Bankruptcy Law.

The Constitution of the United States confers upon Congress the power "to establish uniform laws on the subject of bankruptcies throughout the United States." If Congress does not pass such laws, the states are free to do so. But if Congress does pass such laws, the state bankruptcy laws cease to operate while such national statutes are in force.

National bankruptcy laws have been in operation from 1800 to 1803, from 1841 to 1843, from 1867 to 1878, and since July 1, 1898. The state laws are therefore now suspended, but would revive if the federal statute were repealed.

If a person is discharged in bankruptcy from his debts, he may revive any of them by an express promise to pay them. Such promise requires no new consideration; it simply waives the bar raised by the discharge in bankruptcy.

Acts of Bankruptcy.

The United States Bankruptcy Law provides that "Acts of bankruptcy by a person shall consist of his having (1) conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, any part of his property with intent to hinder, delay, or defraud his creditors, or any of them; or (2) transferred, while insolvent, any portion of his property to one or more creditors with intent to prefer such creditors over his other

creditors; or (3) suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings. . . . ; or (4) made a general assignment for the benefit of his creditors; or (5) admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that ground."

It further provides that "A person shall be deemed insolvent whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, with intent to defraud, hinder, and delay his creditors, shall not at a fair valuation be sufficient in amount to pay his debts."

Who May Become Bankrupts.

The law further provides that (a) any person who owes debts, except a corporation, shall be entitled to the benefits of this act as a voluntary bankrupt; (b) any natural person (except a wage-earner at a rate not exceeding $1500 a year, or a person engaged chiefly in farming or the tillage of the soil), any unincorporated company, and any corporation engaged principally in manufacturing, trading, printing, publishing, or mercantile pursuits, owing debts to the amount of $1000 or over, may be adjudged an involuntary bankrupt; (c) a partnership, during the continuation of the partnership business, or after its dissolution, and before a final settlement thereof, may be adjudged a bankrupt.

A petition may be filed against a person who is insolvent and who has committed an act of bankruptcy within four months after the commission of such act.

Proof and Allowance of Claims.

(a) Proof of claims shall consist of a statement under oath, in writing, signed by a creditor setting forth the claim, the consideration therefor, and whether any, and if so, what securities are held therefor, and whether any, and if so, what payments have been made thereon, and that the sum claimed is justly owing from the bankrupt to the creditor.

(b) Whenever a claim is founded upon an instrument of writing, such instrument, unless lost or destroyed, shall be filed with the proof of claim.

If such instrument is lost or destroyed, a statement of such fact and of the circumstances of such loss or destruction shall be filed under oath with the claim.

After the claim is allowed or disallowed, such instrument may be withdrawn by permission of the court, upon leaving a copy thereof on file with the claim.

(c) Claims after being proved may, for the purpose of allowance, be filed with the claimants in the court where the proceedings are pending, or before the referee if the case has been referred.

(d) Claims which have been duly proved shall be allowed, upon receipt by or upon presentation to the court, unless objection to their allowance shall be made by parties in interest, or their consideration be continued for cause by the court upon its own motion.

(e) Claims of secured creditors and those who have priority may be allowed to enable such creditors to participate in the proceedings at the creditors' meetings held prior to the determination of the value of their securities or priorities, but shall be allowed for such

sums only as to the courts seem to be owing over and above the value of their securities or priorities.

(f) Objections to claims shall be heard and determined as soon as the convenience of the court and the best interests of the estates and the claimants will permit.

(g) The claims of creditors who have received preferences, voidable under Section 60 of this Act, or to whom conveyances, transfers, assignments, or encumbrances, void or voidable under Section 67 of this act, have been made or given, shall not be allowed unless such creditors shall surrender such preferences, conveyances, transfers, assignments, or encumbrances.

(h) The value of securities held by secured debtors shall be determined by converting the same into money according to the terms of the agreement pursuant to which such securities were delivered to such creditors or by such creditors and the trustee, by agreement, arbitration, compromise, or litigation, as the court may direct, and the amount of such value shall be credited upon such claims, and a dividend shall be paid only on the unpaid balance.

(i) Whenever a creditor, whose claim against a bankrupt estate is secured by the individual undertaking of any person, fails to prove such claim, such person may do so in the creditor's name, and if he discharge such undertaking in whole or in part he shall be subrogated to that extent to the rights of the creditor.

(j) Debts owing to the United States, a state, a county, a district, or a municipality, as a penalty or forfeiture, shall not be allowed, except for the amount of

the pecuniary loss sustained by the act, transaction, or proceeding, out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued thereon according to law.

(k) Claims which have been allowed may be reconsidered for cause and reallowed or rejected in whole or in part, according to the equities of the case, before, but not after the estate has been closed.

(l) Whenever a claim shall have been reconsidered and rejected, in whole or in part, upon which a dividend has been paid, the trustee may recover from the creditor the amount of the dividend received upon the claim if rejected in whole, or the proportional part thereof if rejected only in part.

(m) The claim of any estate which is being administered in bankruptcy against any like estate may be proved by the trustee and allowed by the court in the same manner and upon like terms as the claims of other creditors.

(n) Claims shall not be proved against a bankrupt estate subsequent to 1 year after the adjudication; or, if they are liquidated by litigation and the final judgment therein is rendered within 30 days before or after the expiration of such time, then within 60 days after the rendition of such judgment; provided, that the right of infants and insane persons without guardians, without notice of the proceedings, may continue 6 months longer.

Declaration and Payment of Dividends.

(a) Dividends of an equal per centum shall be de-

clared and paid on all allowed claims, except such as have priority or are secured.

(b) The first dividend shall be declared within 30 days after the adjudication, if the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as have not been, but probably will be, allowed equal 5 per cent. or more of such allowed claims.

Dividends subsequent to the first shall be declared upon like terms as the first and as often as the amount shall equal 10 per cent. or more, and upon closing the estate.

Dividends may be declared oftener and in smaller proportions if the judge shall so order; provided, that the first dividend shall not include more than 50 per cent. of the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as probably will be allowed; and provided further, that the final dividend shall not be declared within 3 months after the first dividend shall be declared.

Discharge of the Bankrupt.

The law further provides for the discharge of the bankrupt unless he has been guilty of fraud or concealment. The discharge releases him from all his debts *except* taxes, judgments for fraud or for wilful injuries, debts not scheduled in time for proof and allowance, or debts created by fraud or embezzlement while acting as an officer or in any fiduciary capacity.

CHAPTER XII.

PATENTS AND COPYRIGHTS.

Definitions, etc.—A *patent* is a public franchise, or particular privilege or right, granted by the government to the inventor of a new and useful improvement, to secure to him for a limited term the exclusive right to make, use, and vend the article or object patented.

A *trademark* is a distinguishing mark or device adopted by a person, firm or corporation, and impressed on their goods, labels, etc., to distinguish them from those of others. In the United States, England, and other countries, the registration and protection of trademarks is regulated by statute. In the United States the protection for a registered trademark remains in force for thirty years and can then be renewed for thirty years longer. Trademarks are registered in the Patent Office, Washington, D. C.

A *copyright* is the exclusive right of publication granted an author or artist, for a certain term of years, embracing the right to issue his specified literary or artistic work as desired; to transfer such right to any individual, firm or corporation; and to protect himself under the law against any infringement. For methods of securing copyright, etc., see provisions of the new United States Copyright Law, *infra.*

Patent Office Procedure.

Patents are issued in the name of the United States, and under the seal of the Patent Office, to any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter or any new and useful improvement thereof, or any new original and ornamental design for an article of manufacture, not known or used by others in this country before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof or more than two years prior to his application, and not in public use or on sale in the United States for more than two years prior to his application, unless the same is proved to have been abandoned; upon payment of the fees required by law and other due proceedings had.

No person otherwise entitled thereto will be debarred from receiving a patent for his invention or discovery, by reason of its having been first patented or caused to be patented by the inventor or his legal representatives or assigns in a foreign country, unless the application for said foreign patent was filed more than twelve months prior to the filing of the application in this country, and four months in cases of designs, in which case no patent shall be granted in this country.

Applications.

Applications for a patent must be made in writing to the Commissioner of Patents. The applicant must also file in the Patent Office a written description of the invention or discovery, and of the manner and process of

making, constructing, compounding, and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, construct, compound, and use the same; and in case of a machine, he must explain the principle thereof, and the best mode in which he has contemplated applying that principle, so as to distinguish it from other inventions, and particularly point out and distinctly claim the part, improvement, or combination which he claims as his invention or discovery. The specification and claim must be signed by the inventor and attested by two witnesses.

Drawings and Models.

When the nature of the case admits of drawings, the applicant must furnish a drawing of the required size, signed by the inventor or his attorney in fact, and attested by two witnesses. In all cases which admit of representation by model, the applicant, if required by the Patent Office, shall furnish a model of convenient size to exhibit advantageously the several parts of his invention or discovery.

Oath by Applicant.

The applicant shall make oath that he verily believes himself to be the original and first inventor or discoverer of the art, machine, manufacture, composition, or improvement for which he solicits a patent; that he does not know and does not believe that the same was ever before known or used, and shall state of what country he is a citizen and where he resides, and whether he is the

sole or joint inventor of the invention claimed in his application.

In every original application the applicant must distinctly state under oath that the invention has not been patented to himself or to others with his knowledge or consent in this or any foreign country for more than two years prior to his application, or on an application for a patent filed in any foreign country by himself or his legal representatives or assigns more than twelve months prior to his application in this country, or four months in cases of designs. If any application for patent has been filed in any foreign country by the applicant in this country or by his legal representatives or assigns, prior to his application in this country, he shall state the country or countries in which such application has been filed, giving the date of such application, and shall also state that no application has been filed in any other country or countries than those mentioned; that to the best of his knowledge and belief the invention has not been in public use or on sale in the United States nor described in any printed publication or patent in this or any foreign country for more than two years prior to his application in this country. Such oath may be made before any person within the United States authorized by law to administer oaths, or, when the applicant resides in a foreign country, before any minister, charge d'affaires, consul, or commercial agent holding commission under the Government of the United States, or before any notary public, judge or magistrate having an official seal and authorized to administer oaths in that country, whose authority shall be proved by a certificate of a diplomatic or consular officer of the United States, except

that no acknowledgment may be taken by any attorney appearing in the case.

Issuance of Patent.

On the filing of such application and the payment of the fees required by law, if, on examination, it appears that the applicant is justly entitled to a patent under the law, and that the same is sufficiently useful and important, the Commissioner will issue a patent therefor.

Assignability of Patent.

Every patent or any interest therein shall be assignable in law by an instrument in writing; and the patentee or his assigns or legal representatives may, in like manner, grant and convey an exclusive right under his patent to the whole or any specified part of the United States.

Reissues.

A reissue is granted to the original patentee, his legal representatives, or the assignees of the entire interest when, by reason of a defective or insufficient specification, or by reason of the patentee claiming as his invention or discovery more than he had a right to claim as new, the original patent is inoperative or invalid, provided the error has arisen from inadvertence, accident, or mistake, and without any fraudulent or deceptive intention. Reissue applications must be made and the specifications sworn to by the inventors, if they be living.

Fees.

Fees must be paid in advance, and are as follows: On filing each original application for a patent, $15. On issuing each original patent, $20. In design cases: For

three years and six months, $10; for seven years, $15; for fourteen years, $30. On filing each caveat, $10. On every application for the reissue of a patent, $30. On filing each disclaimer, $10. For certified copies of patents and other papers in manuscript, ten cents per hundred words and twenty-five cents for the certificate; for certified copies of printed patents, eighty cents. For uncertified printed copies of specifications and drawings of patents, five cents each. For recording every assignment, agreement, power of attorney, or other paper, of three hundred words or under, $1; of over three hundred and under one thousand words, $2; for each additional thousand words, or fraction thereof, $1. For copies of drawings, the reasonable cost of making them. The Patent Office is prepared to furnish positive photographic copies of any drawing, foreign or domestic, in the possession of the office, in sizes and at rates as follows: Large size, 10x15 inches, twenty-five cents; medium size, 8x12½ inches, fifteen cents. Fee for examining and registering trademark, $10, which includes certificate. Stamps cannot be accepted by the Patent Office in payment of fees. Stamps and stamped envelopes should not be sent to the office for replies to letters, as stamps are not required on mail matter emanating from the Patent Office.

Law and Rules of Practice.

A copy of the Patent Laws of the United States with annotations, can be obtained by inventors and others interested, by addressing the Commissioner of Patents, Washington, D. C.; also a pamphlet containing

the Rules of Practice in the United States Patent Office, revised to date.

Caveats Abolished.

Until recently an inventor was permitted to file a caveat, or notice to the Patent Office of the caveator's claim as inventor, in order to prevent the grant of a patent to another person for the same alleged invention upon an application filed during the life of the caveat without notice to the caveator.

But caveats cannot now be filed, the law in this respect having been repealed by Congress July 1, 1910.

COPYRIGHT REGISTRATION.

The steps necessary to secure copyright registration in the United States under the new law in force July 1, 1909, are as follows:

For Works Reproduced in Copies for Sale.

1. *Publish the work with the copyright notice.* The notice may be in the form "Copyright, 19.... (year date of publication) by..... (name of copyright proprietor)."

See below for additional information as to the form and place of the notice.

2. Promptly after publication, send to the Copyright Office, Washington, D. C., two copies of the best edition of the work, with an application for registration and a money order payable to the Register of Copyrights for the statutory registration fee of $1. As to special fee for registration of photographs, see below.

In the case of *books* the copies deposited must be ac-

companied by an *affidavit,* under the official seal of an officer authorized to administer oaths, stating that the type-setting, printing, and binding of the book have been performed within the United States. Affidavit and application forms will be supplied by the Copyright office on request.

For Works Not Reproduced in Copies for Sale.

Copyright may also be had of certain classes of works (see *a, b, c,* below) of which copies are not reproduced for sale, by filing in the Copyright office an application for registration, with the statutory fee of $1, sending therewith:

(a) In the case of lectures or other oral addresses or of dramatic or musical compositions, *one complete manuscript or typewritten copy* of the work.

This privilege of registration, however, does not exempt the copyright proprietor from the deposit of *printed* copies of a dramatic or musical composition or lecture where the work is later reproduced in copies for sale.

(b) In the case of photographs not intended for general circulation, *one photographic print.*

(c) In the case of works of art (paintings, drawings, sculpture); or of drawings or plastic works of a scientific or technical character, *one photograph or other identifying reproduction of the work.*

Fees.

The statutory fee for registration of any work is one dollar, including a certificate of registration under seal. In the case of a *photograph,* if a certificate is not demanded the fee is fifty cents. In the case of several

volumes of the same *book* deposited at the same time, only one registration at one fee is required.

Extract from the Act of March 4, 1909, respecting the Copyright notice.

"SEC. 18. That the notice of copyright required by section nine of this Act shall consist either of the word "Copyright" or the abbreviation "Copr.", accompanied by the name of the copyright proprietor, and if the work be a printed literary, musical, or dramatic work, the notice shall include also the year in which the copyright was secured by publication. In the case, however, of copies of works specified in subsections (f) to (k), inclusive, of section five of this Act, the notice may consist of the letter C inclosed within a circle, and accompanied by the initials, monogram, mark, or symbol of the copyright proprietor: *Provided,* That on some accessible portion of such copies or of the margin, back, permanent base, or pedestal, or of the substance on which such copies shall be mounted, his name shall appear. But in the case of works in which copyright is subsisting when this Act shall go into effect, the notice of copyright may be either in one of the forms prescribed herein or in one of those prescribed by the Act of June eighteenth, eighteen hundred and seventy-four.

"SEC. 19. That the notice of copyright shall be applied, in the case of a book or other printed publication, upon its title-page or the page immediately following, or if a periodical either upon the title-page or upon the first page of text of each separate number or under the title heading, or if a musical work either upon its title-page or the first page of music: *Provided,* That one

notice of copyright in each volume or in each number of a newspaper or periodical published shall suffice."

The following are the classes of works "specified in subsections (f) to (k)":

(f) Maps;

(g) Works of art; models or designs for works of art;

(h) Reproductions of a work of art;

(i) Drawings or plastic works of a scientific or technical character;

(j) Photographs;

(k) Prints and pictorial illustrations.

No Entry of Mere Names.

The copyright laws contain no provision under which protection can be obtained upon a *mere name* or *title*. Entry can not therefore be made in the Copyright Office for coined names; names of articles of manufacture; names of games or puzzles; names of substances; names of products, or names of medicines.

Neither is it possible to secure protection, under the copyright law, for stage names; names of theatrical combinations or troupes; professional names; business names, or names of companies or corporations.

The title, as such, of any literary, musical, dramatic, or artistic production is not subject to protection, and can not be registered to give copyright security to the title.

Names for series or for libraries can not be registered for the purpose of securing the exclusive right to use the names.

The *general name* or *title* of a newspaper or magazine can not be registered for protection of the name as such, but *each issue* of the periodical can be registered upon depositing two copies of the issue, bearing the required notice of copyright.

A mere form of words, also, can not be protected under the copyright law, which does not allow the registration of any form of words, or of mottoes, legends, phrases, sayings, catchwords, riddles, or any similar combination of words.

The provision of the old copyright law permitting an entry of title to be made in advance of the deposit of a complete copy or copies of the copyright work was abrogated by the new law in effect on and after July 1, 1909.

Application Forms.

Applicants for copyright registration are requested to use application forms furnished on request by the Copyright Office.

A separate form should be used for each work to be entered.

Requests for forms should specify the number and kind of forms desired, selected from the following lists:

Books.—For a book written by a citizen or resident of the United States, ask for *Application Form A*[1], and *Affidavit Form,* specifying in the request whether the book is to be *printed from type* or plates made from type or is to be *produced by lithographic or photo-engraving process.*

For the American edition of a book in the English language on which *ad interim* copyright has been pre-

viously secured, ask for *Application Form A*[2], and Affidavit Form, specifying in the request whether the book is to be printed from type or plates made from type or is to be produced by lithographic or photo-engraving process.

For a book by a foreign author in a foreign language, ask for *Application Form A*[3].

For *ad interim* copyright on a book published abroad in the English language, ask for *Application Form A*[4].

For a contribution to a newspaper or periodical, ask for *Application Form A*[5].

Periodicals.—If it is desired to make a separate application and remittance as each issue appears, ask for *Application Form B*[1]. If it is desired to file a general application in advance and to deposit therewith a sum to cover the fees for several issues, ask for *Application Form B*[2].

Oral Works.—For a lecture, sermon, or address for oral delivery, ask for *Application Form C.*

Dramas.—For a *published* dramatic or dramatico-musical composition, ask for *Application Form D*[1].

For an *unpublished* dramatic or dramatico-musical composition, ask for *Application Form D*[2].

Music.—For a *published* musical composition, ask for *Application Form E*[1].

For an *unpublished* musical composition, ask for *Application Form E*[2].

Maps.—For a *published* map, ask for *Application Form F.*

Works of Art.—For a work of art (painting, drawing, or sculpture); or for model or design for a work

of art; or drawing or plastic work of a scientific or technical character, ask for *Application Form G.*

Reproduction of a Work of Art.—For the registration of any reproduction of a work of art, ask for *Application Form H.*

Photographs.—For a photograph *published* for sale, ask for *Application Form J*[1].

For a photograph *not* to be published, ask for *Application Form J*[2].

Prints or Pictorial Illustrations.—For the registration of any "print" or "pictorial illustration," which is a printed picture, complete in itself and having artistic quality, ask for *Application Form K.*

Affidavit Forms.

For a separate affidavit form to be filed with copies of a book printed from *type set* within the United States or from plates made therefrom, ask for *Affidavit Form A*[1].

For a separate affidavit form to be filed with copies of a book produced by lithographic or photo-engraving process wholly performed within the United States, ask for *Affidavit Form A*[2].

Renewal or Extension.

For the renewal of copyright subsisting in any work for the renewal term of 28 years as provided by section 24 of the new law, available only for works originally entered since July 1, 1881, ask for *Renewal Form R*[1].

For the extension of an existing renewal term from 14 years as provided under the old law, to 28 years granted by the new law, available only for works al-

ready renewed under the old law since July 1, 1895, ask for *Extension Form* R^2.

[These renewal forms can only be used within a period of one year prior to the expiration of the existing term.]

No forms are issued by the Copyright Office for assignments, or licenses, nor for Postmaster's receipts for articles deposited.

Rules of Practice and Procedure.

The following rules were adopted by the Supreme Court of the United States for practice and procedure under Section 25 of "An Act to Amend and Consolidate the Acts Respecting Copyright," approved March 4, 1909; in effect July 1, 1909.

1. The existing rules of equity practice, so far as they may be applicable, shall be enforced in proceedings instituted under section twenty-five (25) of the act of March fourth, nineteen hundred and nine, entitled "An act to amend and consolidate the acts respecting copyright."

2. A copy of the alleged infringement of copyright, if actually made, and a copy of the work alleged to be infringed, should accompany the petition, or its absence be explained; except in cases of alleged infringement by the public performance of dramatic and dramatico-musical compositions, the delivery of lectures, sermons, addresses, and so forth, the infringement of copyright upon sculptures and other similar works and in any case where it is not feasible.

3. Upon the institution of any action, suit, or proceeding, or at any time thereafter, and before the en-

try of final judgment or decree therein, the plaintiff or complainant, or his authorized agent or attorney, may file with the clerk of any court given jurisdiction under section 34 of the act of March 4, 1909, an affidavit stating upon the best of his knowledge, information, and belief, the number and location, as near as may be, of the alleged infringing copies, records, plates, molds, matrices, etc., or other means for making the copies alleged to infringe the copyright, and the value of the same, and with such affidavit shall file with the clerk a bond executed by at least two sureties and approved by the court or a commissioner thereof.

4. Such bond shall bind the sureties in a specified sum, to be fixed by the court, but not less than twice the reasonable value of such infringing copies, plates, records, molds, matrices, or other means for making such infringing copies, and be conditioned for the prompt prosecution of the action, suit or proceeding; for the return of said articles to the defendant, if they or any of them are adjudged not to be infringements, or if the action abates, or is discontinued before they are returned to the defendant; and for the payment to the defendant of any damages which the court may award to him against the plaintiff or complainant. Upon the filing of said affidavit and bond, and the approval of said bond, the clerk shall issue a writ directed to the marshal of the district where the said infringing copies, plates, records, molds, matrices, etc., or other means of making such infringing copies shall be stated in said affidavit to be located, and generally to any marshal of the United States, directing the said marshal to forthwith seize and hold the same subject to the order of the court

issuing said writ, or of the court of the district in which the seizure shall be made.

5. The marshal shall thereupon seize said articles or any smaller or larger part thereof he may then or thereafter find, using such force as may be reasonably necessary in the premises, and serve on the defendant a copy of the affidavit, writ, and bond by delivering the same to him personally, if he can be found within the district, or if he can not be found, to his agent, if any, or to the person from whose possession the articles are taken, or if the owner, agent, or such person can not be found within the district by leaving said copy at the usual place of abode of such owner or agent, with a person of suitable age and discretion, or at the place where said articles are found, and shall make immediate return of such seizure, or attempted seizure, to the court. He shall also attach to said articles a tag or label stating the fact of such seizure and warning all persons from in any manner interfering therewith.

6. A marshal who has seized alleged infringing articles, shall retain them in his possession, keeping them in a secure place, subject to the order of the court.

7. Within three days after the articles are seized, and a copy of the affidavit, writ and bond are served as hereinbefore provided, the defendant shall serve upon the clerk a notice that he excepts to the amount of the penalty of the bond, or to the sureties of the plaintiff or complainant, or both, otherwise he shall be deemed to have waived all objection to the amount of the penalty of the bond and the sufficiency of the sureties thereon. If the court sustain the exceptions it may order a new

bond to be executed by the plaintiff or complainant, or in default thereof within a time to be named by the court, the property to be returned to the defendant.

8. Within ten days after service of such notice, the attorney of the plaintiff or complainant shall serve upon the defendant or his attorney a notice of the justification of the sureties, and said sureties shall justify before the court or a judge thereof at the time therein stated.

9. The defendant, if he does not except to the amount of the penalty of the bond or the sufficiency of the sureties of the plaintiff or complainant, may make application to the court for the return to him of the articles seized, upon filing an affidavit stating all material facts and circumstances tending to show that the articles seized are not infringing copies, records, plates, molds, matrices, or means for making the copies alleged to infringe the copyright.

10. Thereupon the court in its discretion, and after such hearing as it may direct, may order such return upon the filing by the defendant of a bond executed by at least two sureties, binding them in a specified sum to be fixed in the discretion of the court, and conditioned for the delivery of said specified articles to abide the order of the court. The plaintiff or complainant may require such sureties to justify within ten days of the filing of such bond.

11. Upon the granting of such application and the justification of the sureties on the bond, the marshal shall immediately deliver the articles seized to the defendant.

12. Any service required to be performed by any

marshal may be performed by any deputy of such marshal.

13. For services in cases arising under this section, the marshal shall be entitled to the same fees as are allowed for similar services in other cases.

Hints to Expedite Copyright.

To aid the Copyright office to expedite your copyright business:

1. Address plainly all mail or express matter "Register of Copyrights, Library of Congress, Washington, D. C."

2. Add on outside of parcel the name and address of sender. *Caution Postmaster not to cover this with his frank label.*

3. Mail together in one parcel:

(a) The work to be registered;

(b) Application blank (and, if a book, affidavit) and

(c) Money order, express order, or certified check for copyright fee.

Do not send currency or coin or postage stamps for fee.

If this is done, and the application blank carefully and properly filled out, the delay resulting from the need for correspondence will be eliminated.

APPENDIX A.

DECLARATION OF INDEPENDENCE.

The unanimous declaration of the thirteen United States of America, in Congress, July 4, 1776.

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient

causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty to throw off such government, and to provide new guards for their future security. Such has been the patient suffering of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained, and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies, at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time after such dissolutions to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the state remaining, in the meantime, exposed to all the dangers of invasion from without and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitutions and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them by mock trial from punishment for any murders which they should commit on the inhabitants of these States:

For cutting off our trade with all parts of the world:

For imposing taxes on us, without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas, to be tried for pretended offenses:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation and tyranny, already begun, with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these oppressions we have petitioned for redress, in the most humble terms; our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them, from time to time, of attempts, by their legislature, to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity; and we have conjured them by the ties of our common kindred, to disavow these usurpations which would inevitably interrupt our connection and correspondence. They, too, have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them as we hold the rest of mankind, enemies in war, in peace, friends.

We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the supreme judge of the world for the recti-

tude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; and that as free and independent states they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

The foregoing declaration was, by order of Congress, engrossed, and signed by the following members:

JOHN HANCOCK, ET AL.

APPENDIX B.

CONSTITUTION OF THE UNITED STATES.

September 17, 1787.

Preamble: We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE I.

1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

2. First. The house of representatives shall be composed of members chosen every second year, by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

Second. No person shall be a representative who shall not have attained to the age of 25 years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Third. Representatives and direct taxes shall be apportioned among the several States which may be included within this union, according to their respective numbers, which shall be determined by adding to the

whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every 30,000, but each State shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three. (See 14th Amendment).

Fourth. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

Fifth. The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

3. First. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Second. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; and of the third class, at the

expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

Third. No person shall be a senator who shall not have attained to the age of 30 years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

Fourth. The vice-president of the United States shall be president of the senate; but shall have no vote, unless they be equally divided.

Fifth. The senate shall choose their other officers, and also a president pro tempore in the absence of the vice-president, or when he shall exercise the office of president of the United States.

Sixth. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Seventh. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment, according to law.

4. First. The times, places and manner of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof; but the congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators.

Second. The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

5. First. Each house shall be the judge of the elections, returns and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Second. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Third. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

Fourth. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

6. First. The senators and representatives shall receive a compensation for their services, to be ascertained

by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to or returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

Second. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States which shall have been created, or the emolument whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

7. First. All bills for raising a revenue shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills.

Second. Every bill, which shall have passed the house of representatives and the senate, shall, before it becomes a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill,

shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within 10 days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return; in which case it shall not be a law.

Third. Every order, resolution or vote, to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

8. The congress shall have power—

First. To lay and collect taxes, duties, imposts and excises, to pay the debts, and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States:

Second. To borrow money on the credit of the United States:

Third. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

Fourth. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

Fifth. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

Sixth. To provide for the punishment of counterfeiting the securities and current coin of the United States:

Seventh. To establish postoffices and post roads:

Eighth. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:

Ninth. To constitute tribunals inferior to the supreme court. To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations:

Tenth. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

Eleventh. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years:

Twelfth. To provide and maintain a navy:

Thirteenth. To make rules for the government and regulation of the land and naval forces:

Fourteenth. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions:

Fifteenth. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointments of the officers, and the authority of training the militia according to the discipline prescribed by congress.

Sixteenth. To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards and other needful buildings; and,

Seventeenth. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

9. First. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand, eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Second. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

Third. No bill of attainder ar ex post facto law shall be passed.

Fourth. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

Fifth. No tax or duty shall be laid on articles exported from any state. No preference shall be given, by any regulation of commerce or revenue, to the ports

of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear or pay duties in another.

Sixth. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

Seventh. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them shall, without the consent of the congress, accept of any present, emolument, office or title of any kind whatever, from any king, prince, or foreign state.

10. First. No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.

Second. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or com-

pact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

1. First. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and together with the vice-president, chosen for the same term, be elected as follows:

Second. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Third. The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority,

and have an equal number of votes, then the house of representatives shall immediately choose, by ballot, one of them for president; and if no person have a majority, then from the five highest on the list the said house shall, in like manner, choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case after the choice of the president, the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them, by ballot, the vice-president. (The foregoing provisions were changed by the 12th Amendment).

Fourth. The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

Fifth. No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of 35 years, and been 14 years a resident within the United States.

Sixth. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may, by law, provide for the case of removal, death, resignation, or inability, both of the president and vice-president,

declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

Seventh. The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States or any of them.

Eighth. Before he enters on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect and defend the constitution of the United States."

2. First. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States. He may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons, for offenses against the United States, except in cases of impeachment.

Second. He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur: and he shall nominate, and, by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not

herein otherwise provided for, and which shall be established by law. But the congress may, by law, vest the appointment of such inferior officers, as they shall think proper, in the president alone, in the courts of law, or in the heads of departments.

Third. The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions, which shall expire at the end of their next session.

3. He shall, from time to time, give to the congress information of the state of the Union; and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasion, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive ambassadors and other public ministers. He shall take care that the laws be faithfully executed; and shall commission all officers of the United States.

4. The president, vice-president, and all civil officers of the United States, shall be removed from office, on impeachment for the conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a com-

pensation, which shall not be diminished during their continuance in office.

2. First. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state, claiming lands under grants of different states; and between a state or the citizens thereof, and foreign states, citizens or subjects.

Second. In all cases affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the congress shall make.

Third. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trials shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

3. First. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No per-

son shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Second. The congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE IV.

1. Full faith and credit shall be given, in each state, to the public acts, records and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

2. First. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Second. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

Third. No person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.

3. First. New states may be admitted by the congress of this Union; but no new state shall be formed or

erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

Second. The congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

4. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress: Provided, that no amendment which may be made prior to the year one thousand, eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section

of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

1. First. All debts contracted, and engagements entered into, before the adoption of this constitution, shall be as valid against the United States, under this constitution, as under the confederation.

Second. This constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; anything in the constitution or laws of any state to the contrary notwithstanding.

Third. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound, by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord, one thousand, seven hundred and eighty-seven, and of the independence of the United States of America the twelfth.

Amendments to the Constitution.

Proposed by Congress and ratified by the Legislatures of the several States, pursuant to Art. V. of the original Constitution. For the first twelve: 1 Stat. at Large, 21. Thirteenth proposed: 13 Id., 567; proclaimed: Id., 774. Fourteenth proposed: 14 Id., 358; proclaimed: 15 Id., 706, 708. Fifteenth proposed: 15 Id., 346.

I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

II. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

III. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

IV. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

V. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any per-

son be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

VI. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

VII. In suits at common law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

VIII. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

IX. The enumeration, in the constitution, of certain rights shall not be construed to deny or disparage others retained by the people.

X. The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

XI. The judicial power of the United States shall not be construed to extend to any suit in law or equity,

commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

XII. 1. The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom at least shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the

vice-president shall act as president; as in the case of the death or other constitutional disability of the president.

2. The person having the greatest number of votes as vice-president, shall be the vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the senate shall choose a vice-president. A quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.

XIII. 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.

XIV. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

2. Representatives shall be apportioned among the several states, according to their respective numbers, counting the whole number of persons in each state,

excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state being 21 years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens 21 years of age in such state.

3. No person shall be a senator or representative in congress, or elector of president and vice-president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may, by a vote of two-thirds of each house, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United

States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

5. The congress shall have power to enforce, by appropriate legislation, the provisions of this article.

XV. 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or any state on account of race, color or previous condition of servitude.

2. The congress shall have power to enforce this article by appropriate legislation.

"I know no method to secure the repeal of bad or obnoxious laws so effectual as their strict construction."—Ulysses S. Grant.

DICTIONARY OF LAW TERMS IN COMMON USE.

Abandonment. In marine insurance, the giving up of property partly destroyed, by the owner to the insurer.

Abstract of Title. An outline history of the title to land, consisting of a synopsis or summary of all conveyances, mortgages, liens, and charges affecting the parcel of land in question.

Acceptance. The assent of the offeree to the proposal of the offeror, thus concluding a contract; the act by which the drawee of a bill of exchange assents to the request of the drawer to pay it and makes himself liable to pay it.

Acceptor. The person who accepts a bill of exchange.

Acceptor supra protest. The person who, after it is protested, accepts a bill of exchange for the honor of the drawer or an indorser.

Accommodation paper. A bill or note to which the accommodating party puts his name as indorser, maker, or drawer without consideration, in order to lend his credit to another.

Acknowledgment. In conveyancing, the act by which one who has executed a deed or other instrument goes before a notary public, or other authorized officer, and declares or acknowledges that he did execute the same; the certificate of the officer to that effect.

Act of God. Inevitable accident beyond human foresight or control. See *Vis major.*

Administrator. A person appointed by the court to administer the estate of a deceased person who has not by will named an executor. The feminine is *administratrix.*

Administrator de son tort. One who intermeddles with an estate without proper authority.

Admiralty. The system of law governing maritime causes; the court administering this law.

Adult. One of the full legal age, usually twenty-one years.

Adverse possession. A possession of real property adverse to the right or title of another. If continued for a specified period, usually twenty years, it cuts off the right of the other to reclaim the property.

Affidavit. A written declaration under oath.

Agistment. Pasturage of cattle.

Alias. A term applied to a second writ issuing for the same purpose as a prior writ.

Alibi. In another place.

Alienate. To convey; to transfer the title to property.

Allonge. The strip of paper attached to a bill or note to receive further indorsements after the back of the instrument is filled.

Amicus Curiae. Friend of the Court; a bystander in court who may suggest to the court matters of fact or law for its guidance.

Anno Domini. The year of Our Lord.

Answer. In pleading, the matter set up by way of

defense to an action; a formal written statement containing the defense to an action.

Articles. A contractual document containing the terms of an agreement.

Assets. Property of any kind which may be found to belong to the estate of an insolvent or a deceased person, liable to the payment of debts; the aggregate available property of a merchant.

Assignee. One to whom property is assigned. In Bankruptcy, a person appointed to take charge of the debtor's estate.

Assignment. The transfer of rights or interests; a transfer by a failing debtor of his property to an assignee.

Assizes [Eng.]. Sittings of the courts (generally twice a year) in each county, for the disposal of criminal and civil business.

Attachment. The arrest of a person or seizure of his goods under process of law.

Bailment. The receiving and keeping of goods by one for another.

Barratry. Any breach of duty committed by the master of a vessel or the seamen, without the consent of the owner, by reason of which the ship or cargo is injured.

Beneficiary. A person entitled to the income or enjoyment of property the title to which is held by another as trustee; the person to whom a life insurance policy is payable.

Bill of lading. A memorandum signed by a common carrier acknowledging the receipt of goods for shipment.

Blank indorsement. One in which no particular person is named as the one to whom payment is to be made. It consists of the indorser's name alone.

Bona fide. In good faith. *Bona fides,* good faith.

Bottomry bond. An obligation given for a loan upon a vessel and accruing freight.

Capias. A writ authorizing an arrest of a person.

Causa mortis. On account of death.

Caveat. "Let him take heed;" a warning.

Caveat emptor. Let the buyer beware.

Caveat venditor. Let the seller beware.

Cepi corpus. The return indorsed by a sheriff upon a writ of arrest.

Certiorari. A writ directing the proceedings or record of a cause to be brought before a higher court.

Cestui que trust. The party in whose interest a trustee holds property.

Chancery. A court of equity; the system of jurisprudence administered in a court of equity.

Charter. A legislative act together with proceedings taken thereunder by which a corporation is created; to hire or lease a vessel.

Charter party. The contract by which a vessel or some principal part thereof is let for a voyage.

Chose in action. A thing of which one has not the possession, but only a right to demand by action at law.

Civil law. The Roman law as distinguished from the English law.

Collateral. In the law of descent, in a side line, not direct or lineal; in commercial law, a security additional to the personal obligation.

Common carrier. One who, as a business, undertakes for hire to transport from place to place, passengers or goods of all who choose to employ him.

Common law. The law of England, as distinguished from the civil law; that part of the law of England developed by the common law courts.

Composition. An agreement between an insolvent debtor and his creditors whereby the latter agree to take less than the whole of their claims.

Compos mentis. Of sound mind.

Compromise. An agreement to settle a dispute made in view of the uncertainty of legal rights.

Contra bonos mores. Inconsistent with good morals.

Conveyance. An instrument in writing under seal by which any estate in real property is created, aliened, mortgaged, or incumbered.

Covenant. A promise contained in a sealed instrument.

Deed. A sealed instrument containing a contract or conveyance.

De facto Actually existing.

De jure. According to law.

Del credere (Italian, of trust or credit). Applied to an agent who guarantees that purchasers will pay for goods of the principal sold to them.

Demurrage. The allowance to be made by the shipper to the vessel owner as damages for detention of the vessel beyond the time specified in the charter party.

De novo. Anew; from the beginning.

Deposition. The written testimony of a witness taken down upon a legal investigation.

Detinet. "He detains"; a form of action at law to recover possession of specific property.

Devastavit. "He has wasted"; applied to wasteful and improper conduct of administrators with estates.

Dies non. A legal holiday.

Domicile. The place where a man habitually resides.

Donatio mortis causa. A gift of personal property made in contemplation of death and by manual transfer.

Earnest. A sum paid to bind a bargain.

Easement. A right to do some act upon the land of another.

Emblements. The profits of land, as grass, fruit and crops.

Eminent Domain. The right of the sovereign power to take private property for public purposes.

Entail. The settlement of property so as to descend to heirs of the body only.

Equity. The system of jurisprudence administered in the equity courts.

Equity of redemption. The period allowed by equity for a mortgagor, pledgor, etc., to reclaim his property by paying the debt secured by it.

Escheat. The reverting of real property to the Crown or state.

Escrow. A deed signed, but left with another to be delivered upon performance of some stipulated act by the grantee; the execution of a deed in such a way.

Estoppel. A bar to an action arising from a man's own act or deed.

Estray. An animal straying upon the highway or on another's lands.

Estreat. To extract from the records of a court. Where the condition of a bail-bond is broken, the bond is estreated that payment of the penalty may be enforced.

Ex officio. By virtue of the office.

Ex parte. On one part; without participation of both parties.

Ex post facto. After the act has been done.

Ex tempore. Off-hand; without premeditation.

Fee (same as feud or fief). Originally land held of a superior lord in consideration of military service. Now an estate of inheritance in lands.

Fee-simple. An absolute, unqualified fee; the largest estate one can have in lands.

Fee-tail (from French *taille,* a cutting). A fee from which the general heirs are cut off and only particular heirs are designated.

Felo de se. A suicide.

Feoffment. A deed of grant of lands.

Ferae naturae. Animals and birds *ferae naturae* are such as are wild and not capable of being domesticated.

Fiat. An imperative command or decree.

Fiduciary. As a noun, a person in a relation of trust or confidence; as an adjective, signifying a relation of trust or confidence.

Fieri facias. A writ of execution.

Flotsam. Goods found floating in the sea.

Forcible detainer. Keeping possession of lands by force.

Foreclosure. A proceeding for extinguishing the right of a mortgagor or pledgor to redeem the property given as security for a debt.

Forma pauperis. In the character of a pauper. A poor person is sometimes allowed by the courts to bring suit in this manner, without payment of fees.

Forum. A court of justice.

Franchise. A special privilege or exemption.

Garnishment. The attachment of debts due a debtor at the hands of his creditors.

General Average. A contribution made by the owners of a vessel and cargo toward the loss sustained by one of their number, whose property has been sacrificed for the general safety.

Good will. Benefit arising from the fact that persons used to trading or doing business at a particular place will continue to do so; it is a property subject to transfer.

Habeas corpus. A writ whereby the legality of any imprisonment may be inquired into. Literally, "he has the body."

Hotchpot. The bringing of all moneys concerned into one sum or account for equal division.

Indenture. Formerly a deed in two copies with cut or serrated edges so that one would fit into the other. Now any deed by which two or more parties enter into reciprocal obligations.

In esse. In being.

In extremis. In immediate danger of death.

Injunction. A writ issued by a court of equity forbidding or commanding something.

In posse. Within probability.

In propria persona. In one's own person.

In statu quo. In the condition in which (one was before).

Insurable interest. Such an interest in the thing insured that the person possessing it may be injured by the risk to which the thing insured is exposed.

In terrorem. By way of warning or menace.

Intestate. Without a will or testament.

In transitu. On the passage; in transit.

Ipso facto. By that fact.

Ipso jure. By the law itself.

Joint and several. An obligation by two or more which may be enforced against all jointly or each individually.

Joint-Stock Company. A species of partnership possessing some of the characteristics of corporations.

Joint tenants. Such as possess a common title to the same land.

Jurat. The memorandum or certificate appended to an affidavit to show when, where and before what officer it was sworn.

Jure gentium. By the law of nations.

Justifying bail. If exception be taken to the bail offered by a person arrested, the bail must justify, by proving on oath that they are possessed of sufficient property, are resident freeholders or householders, etc.

Laches. Negligence or culpable delay in prosecuting legal rights.

Law Merchant. The general body of usages in matters relative to commerce; commercial law.

Levare facias. A writ of execution against goods and chattels.

Lex talionis. The law of retaliation in kind.

Lien. A charge imposed upon property by which it is made security for a debt or other obligation.

Liquidated damages. Agreed or ascertained damages; not uncertain.

Livery of seisin. The delivery, or handing over from one to another, of the possession of lands.

Loco parentis. In the place of the parent.

L. S. Abbreviation for *locus sigilli,* place of the seal.

Malfeasance. A wrongful act.

Malum in se. Bad in itself; that which is forbidden by natural or moral justice.

Malum prohibitum. Bad because forbidden; that which is forbidden by express statutory or common law.

Mandamus. A peremptory writ to enforce the fulfilment of a duty.

Mesne. Middle; intervening.

Messuage. A legal term for a house.

Misfeasance. A wrongful act.

Mittimus. A precept, under the hand and seal of a magistrate, for the imprisonment of an offender.

Municipal law. The law of a particular country as distinguished from international law.

Mutatis mutandis. Changing what ought to be changed.

Mystery. An art, trade, craft or occupation.

Ne exeat provincia. A writ to arrest a debtor about to abscond from the province of the court.

Negligence. A failure to use the care that a reasonably prudent man would use under like circumstances.

Nemine contradicente. None dissenting.

Nisi prius. A court where actions are tried before a judge and jury.

Nolle prosequi. A discontinuance of further proceedings in criminal cases.

Non est inventus. The return of a sheriff indorsed upon a summons or subpœna where the party is not found in his bailiwick.

Nudum pactum. A contract invalid at law.

Obligation. A legal duty to do or not to do a certain thing. An *obligor* is one who has undertaken an obligation. An *obligee* is one entitled to the performance of an obligation.

Onus probandi. The burden of proof.

Overt. Open; public.

Oyer and terminer. To hear and to determine; applied to superior courts for the trial of criminal offenses.

Paraphernalia. The wearing apparel, jewels, etc., of a wife or widow, which she is entitled to retain at her husband's death in addition to her dower and jointure.

Parol. A word of speech; that which is expressed orally; not in writing.

Party wall. A wall used jointly by two tenements which it separates.

Per capita. "By the heads"; share and share alike.

Per se. By himself, or itself.

Plough bote. The right of a tenant to cut sufficient timber to make and repair implements of husbandry.

Pluries. "Very often"; a third writ, after two have issued against a defendant.

Posse comitatus. A body of citizens summoned by the sheriff to assist him in maintaining the public peace, or enforcing the law.

Postea. "Afterwards"; the indorsement of the verdict upon the record.

Post mortem. After death.

Prima facie. At first glance.

Prochein amy. The next (or nearest) friend.

Prohibition. A writ whereby a superior court stays proceedings in an inferior.

Pro rata. According to the proportion or allowance.

Pro tanto. For so much.

Puisne. A name applied to judges of superior courts who are not chief justices.

Purview. The preamble to a statute.

Putative. Suspected.

Quamdiu se bene gesserit. During good behaviour.

Quantum meruit. As much as he has earned.

Quantum valebat. As much as it is worth.

Quare clausum fregit. "Why he broke the close"; the name of an action brought for trespass to land.

Quash. To set aside; to nullify.

Qui tam. A proceeding by an informer to recover a penalty imposed upon, or reward given by a penal statute.

Quo animo. With what intent.

Quorum. The number of persons whose presence is required before a legislative or corporate body can proceed to act.

Quo warranto. By what authority; a writ to determine the right or ownership of a franchise or office.

Ratification. The confirmation of a previous contract or act which is not binding.

Realty. Real property; lands, houses, etc.

Receiver. A person appointed by a court to take possession and control of property pending litigation and some final decree of the court.

Record. A copy of the pleadings in an action at law, preserved in court for reference.

Recoupment. A reduction or diminution of damages on account of a breach of warranty or defects in performance.

Redemption. The act by which a mortgagor, pledgor, etc., reclaims the title and possession of the property by paying the debt so secured.

Relator. An informer.

Remainder. What is left of an estate in fee of lands after a smaller estate has been granted out of it.

Remanet. A cause left undisposed of at an assize.

Replevin. An action to recover possession of goods.

Rescission. The annulling or dissolution of contracts by mutual consent, or by one party.

Residuary legatee. The person who under a will takes all the personal property of the testator not specifically bequeathed.

Res integra. An entire matter.

Salvage. Property saved from wreck or loss at sea; or compensation given for service rendered in saving it.

Scintilla. A spark; a very small quantity.

Scire facias. "That you declare"; a writ commanding a party to show cause why a certain thing should not be done.

Seisin. Possession.

Sequestration. A process employed by courts of equity for enforcing obedience to their decrees, whereby the delinquent party is deprived of his entire estate.

Set-off. A counter-claim; the mutual liquidation of opposing demands.

Severalty. An estate in severalty is one held by a single person independent of any claim thereto by another.

Severance. The cutting and carrying away of grain.

Sine die. Without day; where no day is, at the adjournment of a meeting, appointed for its reassembling, it is said to adjourn *sine die.*

Specialty. A contract under seal.

Specific performance. A decree by an equity court that a party shall actually perform his contract promise instead of paying damages for the breach.

SS. An abbreviation used after the statement of the venue (state and county) and supposed to be a contraction of *scilicet* (*scire licet*), meaning "as one may learn," or "to wit," or "namely."

Statute of Frauds. An English statute, generally re-enacted in this country, requiring certain contracts to be made in writing, designed to prevent fraud and perjury.

Statute of Limitations. A statute fixing a time within which actions must be brought.

Subpoena. A writ to compel a witness to attend a trial.

Subrogation. The substitution of one person or thing in the place of another, particularly the substitution of one person in the place of another as a creditor, with a succession to the rights of the latter.

Sui generis. Of its kind.

Summons. A mandate from a justice of the peace to an accused person, requiring the appearance of the latter.

Supersedeas. A writ to stay proceedings.

Tender. An offer of money to be accepted in full of a claim.

Tenement. A house or dwelling.

Terse tenant. The person having actual possession of land.

Testament. That which is witnessed. Employed as a synonym for will. Formerly it meant a will of personalty but is now used interchangeably with the term "will."

Testator. One who makes a will. The feminine is *testatrix.*

Tort. A wrongful act, other than a mere breach of contract, for which a common law court will give damages.

Trover (Old French *trover,* to find). An action for the recovery of damages for the conversion of goods, based originally on a fiction that the defendant had found the goods and refused to return them to the rightful owner.

Ultra vires. Beyond the power. Applied to acts of corporations beyond the charter powers.

Usance. Interest; usury.

Venditioni exponas. A writ of execution.

Vendor. A seller.

Vendee. One to whom a thing is sold.

Venire. A writ directing a sheriff to summon jurors.

Venue. The place from which the jury are summoned.

Vice versa. On the contrary.

Vi et armis. By force and arms, unlawfully.

Vis major. Superior force. Includes more than act of God, as the act of a public enemy.

Viva voce. Verbally.

Voire dire. [Old French, "to speak true."] A witness who is suspected of being incompetent to give evidence at a trial, as by reason of partiality or otherwise, may be examined upon the *voire dire* before being examined in chief.

Waiver. The surrender of some right or privilege which the law gives.

Warrant. A written authority or precept under the hand and seal of a judge or justice of the peace, empowering a constable to make an arrest, search for stolen goods, etc.

Legal Forms
used in
Business

LEGAL FORMS USED IN BUSINESS

No. 1.

AFFIDAVIT OF CLAIM

State of Illinois, ..., County, ss.

.....

vs.

.....

In ..... Court.

....., being first duly sworn on oath, says that he is the plaintiff in this suit and that the demand of the plaintiff in the above entitled cause is for merchandise sold and delivered to the defendant, and that the amount due to said plaintiff from the defendant in said cause, after allowing to said defendant all his just deductions, credits, and set off, if any, is ..... Dollars and ..... cents.

.....

Subscribed and sworn to before me, this ..... day of ....., 19....

.....

Notary Public.

No. 2.

AFFIDAVIT FOR CHANGE OF VENUE

State of Illinois, ..., County, ss.

In ..... Court, before ....., Esq., Justice of the Peace.

.....

vs.

.....

....., being duly sworn according to law, says that he is the defendant in the above entitled cause, and that he

verily believes that he can not have a fair and impartial trial before ....., Justice of the Peace, in the cause wherein ..... is plaintiff, and affiant is defendant, and prays that a change of venue be granted to the nearest Justice.

.....

Subscribed and sworn to before me, this .....day of ..... 19....

.....

Justice of the Peace.

No. 3.

MORTGAGE—STATUTORY FORM

This Indenture Witnesseth, that the mortgagors,..... and ....., his wife, of the City of....., in the County of ....., and State of Illinois, mortgage and warrant to ....., of the City of....., County of....., and State of Illinois, to secure the payment of one certain promissory note, executed by them bearing even date herewith, payable to the order of.....at his office at ....., Illinois, ... year ....after date being for the sum of ..... dollars, and to bear interest at the rate of ..... per cent. per annum from date until paid, the following described real estate, to-wit: (Here insert description) situated in the County of ....., in the State of Illinois, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this state.

Dated, this ..... day of ....., A. D. 19....

.....(SEAL)

.....(SEAL)

State of Illinois, ..., County, ss.

I, ..., a Notary Public in and for said County, in the State aforesaid, do hereby, certify, that ....., and ....., his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and ac-

knowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal, this ..... day of ....., A. D. 19....

(SEAL) .....,
Notary Public.

No. 4.

STOCK SUBSCRIPTION

We, the undersigned, hereby severally agree, each with the other, and with .....
.....
.....
a corporation to be organized under the laws of the State of Illinois, in consideration of the mutual agreements hereinafter contained, to pay for and receive the number of shares of capital stock of said Company set against our respective names; and hereby waiving all necessary assessment, we agree to make payment or payments for the same to the Treasurer of said Company, on demand, at such times and in such amounts as the Directors of said Corporation may direct.

		No. of Shares.	
NAMES.	RESIDENCES.	PREFERRED.	COMMON
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

No. 5.

NOTICE OF MEETING TO ORGANIZE

To .....

You are hereby notified that the capital stock of .....
.....
has been fully subscribed, and that a meeting of the subscribers to the capital stock of said company, will be held at .....

on the ..... day of ..... A. D. 19...
at ..... o'clock .... M., for the purpose of electing a board of (Directors or Managers) and for the transaction of such other business as may be deemed necessary.

Dated the ..... day of ..... 19....

.....
.....
.....
Commissioners.

No. 6.

SHORT GENERAL CONTRACT

Contract, Made and concluded the ..... day of..... One Thousand Nine Hundred and ....., by and between ...., of the ..... of ..... County of ....., and State of ..... party of the first part, and ....., of the ..... of ....., County of ....., and State of ....., party of the second part, in these words: The said part ... of the second part covenant ... and agree ... to and with the said party of the first part, to ....

..... Dollars, as fixed and liquidated damages to be paid by the failing party.

In Witness Whereof, The parties to these presents have hereunto set their hands and seals, the day and year first above written.

.....(SEAL)
.....(SEAL)
.....(SEAL)

Sealed and delivered in the presence of
.....

No. 7.

CERTIFICATE AS TO BY-LAWS OF CORPORATION

Know all Men By These Presents.

That we, the undersigned, Directors and Secretary of the Corporation known as and called the ..... do hereby certify that the above and foregoing By-Laws were duly adopted as the By-Laws of said Corporation, on the..... day of ..... A. D. nineteen hundred and ..... and that the same do now constitute the By-Laws of said Corporation.

.....
.....
.....
.....
.....
Directors.

.....
Secretary of the .....

ARTICLES OF INCORPORATION

(Clauses Covering Specific Objects)

No. 8. *Advertising Agents.*—To carry on the business of advertising contractors and agents and any other business which may be usefully caried on in connection with such business, and to acquire and undertake the whole or any part of the business, prop-

erty, and liabilities of any person or company carrying on business as such contractors or agents, or any other business which may be usefully caried on therewith.

No. 9. *Advertising.*—To engage in and carry on a general advertising business by the circulation and distribution and the display of cards, signs, posters, dodgers, hand-bills, programmes, banners and flags, to be placed in and on railroad cars, street cars, steamboats, cabs, hacks, omnibusses, stages, and any and all kinds of conveyances used for passengers or any other purpose. To display movable or changeable signs, cards, pictures, designs, mottoes, etc., operated by clock-work, electricity or any other power, to use, place and display the same in depots, hotels, halls and other public places. To make contracts with individuals and corporations for the exclusive use of their property and to purchase, control and use individual rights, easements and contracts, and to have all the rights, powers and privileges and franchises incident to and granted to corporations organized by virtue of the laws of Illinois.

No. 10. *Automobiles.*—To manufacture and deal in automobiles, motors, bicycles and vehicles of all kinds and in all articles and supplies used in connection therewith.

No. 11. *Automobiles.*—To buy, sell, lease, store and repair automobiles and motor vehicles of all descriptions and their parts and accessories; and to manufacture and sell automobile tops, bodies and other automobile parts.

No. 12. *Automobiles.*—To manufacture automobiles, motor boats and marine engines, and all kinds of hardware, machinery, metal castings, electrical appliances and all other articles from metal or wood or both, necessary or convenient in the manufacture of said automobiles or motor boats or parts incident thereto.

No. 13. *Baseball.*—To lease, own, control and manage grounds for giving public exhibitions of baseball and other field games and out-door entertainments of all kinds, manage and control a baseball club and other clubs for playing field games and giving entertainments and to do such other business as it may engage in under the laws of Illinois.

No. 14. *Boilers.*—To manufacture, buy, sell, deal in, deal with, handle, repair, construct or erect, water tube boilers for station-

ary and marine purposes, and any and all appurtenances thereof; to manufacture, buy, sell, deal in, deal with, handle, construct or erect any and all kinds of boilers, engines, machinery, tools, implements, motors, castings and any and all materials and supplies of any kind or character connected therewith or a part thereof; to manufacture iron, steel, copper, lumber and any other materials, and all or any articles consisting or partly consisting of iron, steel, copper, wood or any other materials and all or any products thereof; to engage in manufacturing of all kinds, and to manufacture articles of any and every kind; to manufacture, produce, deal in and handle any and all kinds of machinery and mechanical devices of every kind and character.

No. 15. *Brick.*—To buy, lease and mine fire clay, and manufacture and deal in fire, paving and building brick, sewer pipe, tile and any and all other useful articles that may be made in whole or in part from clay, to contract for and lay brick pavements, and buy, own and operate steamers and barges in connection with such business, and generally to do all things proper and necessary in conducting such business.

No. 16. *Brokers.*—To do a general brokerage, commission, forwarding and export business; to buy, sell and deal in all kinds of commodities dealt in upon the Board of Trade and other Boards of Trade and Exchanges; to buy, sell and deal in all kinds of listed and unlisted stocks, bonds and securities on commission.

No. 17. *Building Company.*—To own, lease and operate sawmills, to purchase, manufacture and sell lumber, brick and other building materials, to build and repair houses, boats and barges and other structures, to build, maintain and operate marine ways and docks, to conduct a mercantile business in connection with said operations. And to purchase, hold and lease such real estate as may be necessary for the successful operation of the aforesaid business.

No. 18. *Butchers.*—To deal in, buy, sell and slaughter cattle, calves, hogs, sheep and live stock generally, and to manufacture and sell the products thereof.

No. 19. *Butter and Cheese.*—To manufacture, buy and sell at wholesale or retail, butter, cheese and other merchandise.

No. 20. *Cement Merchants.*—To carry on all or any of the businesses of manufacturers of and dealers and workers in cement and other kindred substances, lime, plasters, whiting, clay, gravel, sand, minerals, earth, coke, fuel, artificial stone, and builders' requisites and conveniences of all kinds, and of engineers, ship, barge, lighter, and truck owners, quarry owners, builders, general contractors.

No. 21. *Cleansing.*—To clean and renovate textile fabrics, household furniture and public and private buildings by the use of compressed air machines.

No. 22. *Clothing Manufacturers.*—To manufacture and sell as custom tailors wearing apparel for men and women.

No. 23. *Commission Business.*—To carry on a general merchandise business, and a general commission business, that is, to buy and sell dry goods, groceries, boots and shoes, hats, notions and other merchandise, and to receive for sale and to sell on commission cotton, wool, hides and any produce consigned for sale, and to make advances on such consignments, and to charge for such sales and advances.

No. 24. *Confectionery.*—To manufacture and sell at wholesale and retail candies and confectionery, confectionery novelties and confectionery supplies, and the ingredients and by-products thereof.

No. 25. *Construction Company.*—To contract for and erect buildings of every description and to manufacture and sell building materials from iron, steel or any other metal or stone, brick, cement, wood, or other material.

No. 26. *Contracting.*—To contract for the construction of public works, railroads or any other works, and for the purpose of carrying on the business of merchandising or any other business incident to such contracting aforesaid; to buy and sell personal property of all kinds, and to do all things which a contracting corporation may do; such contracting and business to be carried on in the United States and foreign countries.

No. 27. *Dairy Products.*—To purchase, sell and deal in milk and cream and other dairy products, and to manufacture and sell any of the products or derivatives of milk or cream, and for the

purpose above described to operate an artificial cold storage plant, and to manufacture ice, and to conduct such other lines of business as may be necessary for carrying on a general dairy business.

No. 28. *Department Store.*—To manufacture, purchase and sell merchandise for personal and household use and adornment, and generally such articles of merchandise as are dealt in by department stores.

No. 29. *Department Store.*—To manufacture, purchase, and sell merchandise for personal, household and general use and ornament, including gold and silverware and all articles produced therefrom, and such other general merchandise ordinarily dealt in by a store selling everything pertaining to goods, wares and merchandise for personal, domestic, household or general use.

No. 30. *Dry Goods.*—To manufacture, buy, sell and deal in at wholesale and retail, dry goods, clothing, wearing apparel and textile fabrics of every kind, hats, caps, millinery, boots, shoes, furnishing goods, fancy goods, and all articles and merchandise of like general character and description, and to conduct the business of general dry-goods and clothing merchants, tailors, drapers, haberdashers, milliners, dressmakers and general outfitters.

No. 31. *Druggists.*—To manufacture and compound drugs, chemicals and medicines, to buy, sell at wholesale and retail, and to deal in all kinds of drugs, chemicals, oils, paints and patent, proprietary and other medicines, and to carry on a general merchandise and drug business.

No. 32. *Electrical Supplies.*—To manufacture, sell, deal in and repair electrical supplies, specialties and machinery, and the carrying on of the general electrical business.

No. 33. *Engineering.*—To conduct the business of general engineering and contracting for building construction, and the preparation and production of materials to be used in connection therewith; to manufacture machinery from metal or wood, or both, including the construction and installation of manufacturing plants composed of metal or wood, or both.

No. 34. *Engineering.*—To manufacture, buy and sell, deal in, plan, superintend, erect and install heating, ventilating and refrigerating systems, apparatus and appliances, electric and hydraulic plants

and power plants of every description, and to manufacture, buy, sell, trade and deal in machinery, merchandise and appliances of every character necessary to the conduct of a general engineering business.

No. 35. *Farm Products.*—To buy and sell on commission or otherwise, at wholesale or retail, butter, milk, cheese and all other dairy products, eggs, poultry, fruit, meats, vegetables, and all kinds of farm produce, and to transact all business incidental or appurtenant thereto.

No. 36. *Fixtures.*—To manufacture and sell gas and electric light fixtures and other similar articles of commerce from iron, steel and other metals and minerals.

No. 37. *Flour.*—To hold all real estate proper for the purpose for which it is incorporated, to buy and sell hay, grain, straw, feed, coal and produce of all kinds, to manufacture and sell flour, meal, feed and other products, to establish and operate a general store in connection with the business aforesaid, and to do and carry on any and every operation and business connected with a general milling business and general store.

No. 38. *Footwear.*—To manufacture and sell, deal in and deal with boots, shoes and all kinds of footwear.

No. 39. *Foundries.*—To conduct and carry on a general foundry and machine shop business, and engage in the manufacture of all kinds of iron castings and machinery, and to buy iron, either manufactured or unmanufactured, and to sell the same; and to purchase and hold such real estate as may be necessary to carry on or accommodate said business.

No. 40. *Furniture.*—To manufacture, buy and sell furniture, office and store fixtures, devices, partitions, improvements, and other similar articles of wood or metal, or both, and the installation, alteration and repair thereof.

No. 41. *Garage.*—To manufacture, buy, sell, rent, store, repair and care for motor vehicles of all kinds, and supplies therefor and appurtenances thereto.

No. 42. *Grain Business.*—To buy, sell, trade and deal in grain, feed, hay, straw and other agricultural products at wholesale and retail.

No. 43. *Grain and Produce Business.*—To conduct and carry on the business of buying, selling and dealing in all kinds of grain, hay

and other farm produce and farm products, live stock and provisions, coal, wood and other kinds of fuel, and all other kinds of goods, wares and merchandise, and to do a general commission and brokerage business in any or all of the foregoing kinds of property, and also to build, acquire, own, operate and maintain a warehouse and storage business, and to do and transact all other business necessary or incidental to the conduct and carrying on of the business aforesaid.

No. 44. *Groceries.*—To manufacture, buy and sell groceries, merchandise and articles for personal, domestic and household use.

No. 45. *Hardware.*—To manufacture, purchase and sell mill, machinists', electric, plumbers' and house furnishing supplies and tools and general hardware.

No. 46. *Hardware.*—To carry on a general hardware business, including the purchase and sale of all kinds of hardware, at wholesale and retail, and to lease, buy, hold and sell all such property, real or personal, as may be necessary to the prosecution of the said business.

No. 47. *Harness.*—To manufacture, buy, sell and deal in all kinds of leather; to manufacture, buy, sell, and deal in harness and saddlery, and all other articles made wholly or partly of leather; to manufacture, buy, sell, and deal in hardware of all kinds; to produce, buy, and sell all kinds of hides, tan bark and other materials used in tanning or manufacture of leather goods, or articles made wholly or partly of leather, or hardware; to acquire and deal in patents or patent rights pertaining to tanning or the manufacture of leather goods or hardware, and to sell such patents and patent rights everywhere to others; to mine, buy, and sell coal and iron ore, and manufacture and deal in coke; to do a general mercantile business, by buying and selling goods, wares and merchandise, at wholesale and retail; and to do all things incident to and proper in the carrying out of the purposes aforesaid.

No. 48. *Hotel Company.*—To carry on the business of hotel, restaurant, cafe, tavern, beer-house, refreshment room, and lodging-house keepers, licensed victuallers, wine, beer and spirit merchants, brewers, maltsters, distillers, importers and manufacturers of aerated, mineral and artificial waters and other drinks, purveyors, cater-

ers for public amusements generally, coach, cab and carriage proprietors, livery stable keepers, farmers, dairymen, ice merchants, importers and brokers of food, live and dead stock, and domestic and foreign produce of all descriptions, hairdressers, perfumers, chemists, proprietors of clubs, baths, dressing-rooms, laundries, reading, writing, and newspaper rooms, libraries, grounds, and places of amusement, recreation, sport, entertainment, and instruction of all kinds, tobacco and cigar merchants, agents for railway and shipping companies and carriers, theatrical and opera box office proprietors, entrepreneurs and general agents, and any other business which can be conveniently carried on in connection therewith.

No. 49. *Installment House.*—To conduct a store for the selling of clothing, wearing apparel and house furnishing goods, for cash and on installments.

No. 50. *Iron Foundries.*—To manufacture, purchase, or otherwise acquire, machinery of iron or any other material whatsoever, and to hold, own, sell or otherwise dispose of, trade in, deal in and deal with the same, and to purchase or otherwise acquire iron, scrap iron and any or all other minerals whatsoever, and to hold, own, sell or otherwise dispose of, deal in and deal with the same.

No. 51. *Jewelry.*—To conduct a store or stores for the manufacturing, buying, selling and dealing in watches, silverware, jewelry, and such articles of merchandise as are sold in the jewelry business.

No. 52. *Laundry.*—To carry on at ....., in the county of ..... and elsewhere, the business of a steam and general laundry, and to wash, clean, purify, scour, bleach, wring, dry, iron, color, dye, disinfect, renovate and prepare for use all articles of wearing apparel, household, domestic, and other linen, and cotton and woolen goods and clothing, and fabrics of all kinds, and to buy, sell, hire, manufacture, repair, let or hire, alter, improve, treat and deal in all apparatus, machines, materials, and articles of all kinds, which are capable of being used for any such purposes.

No. 53. *Lumber.*—To carry on a general lumber, tanning and milling business; to lease, purchase and hold timber lands, and other lands in connection therewith; to buy, cut, sell, manufacture and ship timber, lumber, grain, pulp, tanbark, and the products there-

of; construct, own, lease and operate grist mills, saw mills, pulp mills, tan bark mills, and other mills; also tram roads, railroads and other roads, and steamboats and barges, for the transportation of the said commodities to and from said mills; also side booms and pocket booms and shear booms, at and near said mills, for the purpose of catching and holding logs and other timber to be used and manufactured at said mills; carry on a general merchandising business in connection with said lumber and milling business, and to do all things legal, necessary or proper to be done for the successful conduct of the business here contemplated and incident to said business.

No. 54. *Machinery.*—To manufacture, buy, sell, lease, exchange, dispose of, or otherwise deal in all kinds of machinery, engineering and hardware specialties, gasoline or gas engines and motors, steam engines, boilers, electrical motors, machinery, yachts and other boats and vessels, vehicles and appliances, and to carry on the business of a founder, steel manufacturer, machinist and wood worker.

No. 55. *Meat.*—To manufacture, cure, purchase and sell hams, tongues, dried meats, sausage, pudding, lard, grease and other articles of food or commerce derived wholly or in part from hogs, beeves or other animals.

No. 56. *Mercantile Business.*—To carry on a general mercantile or merchandise business and to purchase, sell and deal in such goods, supplies and merchandise as are or may be sold in a general store.

No. 57. *Millinery.*—To manufacture, buy, sell and generally deal in millinery, feathers, ribbons, hats, hosiery, notions, articles of wearing apparel, artificial flowers and other millinery specialties, and all other articles of merchandise of a kindred nature.

No. 58. *Motor Company.*—To manufacture, buy, sell and deal in motors, automobiles and motor boats, and their accessories, parts and appliances, and to store, repair, and rent motors, automobiles and motor boats; and to manufacture, buy, sell and repair vehicles of every description propelled by electric, steam, gas, compressed air or other motive power.

No. 59. *Optical Goods.*—To manufacture, purchase and sell optical goods and glasses of every character, mathematical and

scientific instruments, photographic supplies and materials and all articles and merchandise appertaining to such business.

No. 60. *Paper Boxes.*—To manufacture and sell paper boxes, paper goods and paper substitutes of every kind and description, including raw materials and ingredients used therein and to conduct the business of printing, lithographing, electrotyping and engraving in connection therewith.

No. 61. *Patent Medicines.*—To carry on the business of the manufacture and sale of proprietary medicines, remedies, drugs and chemicals.

No. 62. *Phonographs.*—To introduce into use, rent, sell and otherwise dispose of phonographs and phonograph-graphophones, and other analogous instruments or devices for the recording and reproduction of speech, music or other sounds; and all supplies and things in any way relating thereto and used in connection therewith, and to do any other matter or thing which may be necessary and proper in the premises.

No. 63. *Photographs.*—To conduct and carry on a photography, painting and picture business, and to maintain and operate studios therefor, and to deal in photographers', painters', and artists' supplies.

No. 64. *Printing.*—To transact a printing and publishing business and in connection therewith to transact engraving, lithographing and heraldry business, and to manufacture, buy and sell paper and stationery novelties.

No. 65. *Provisions.*—To carry on all or any of the businesses of dairymen, cheese, butter, eggs and sausage manufacturers and merchants, bacon curers, poultry and live stock breeders, butchers, bakers, confectioners, refreshment contractors, grocers and general provision merchants and dealers. To sell, breed, import, export, improve, prepare, deal and trade in cattle, pigs, poultry, game, and live and dead stock of every description, milk, cream, butter, cheese, eggs, sausages, potted meats, table delicacies and any other commodities, goods or things.

No. 66. *Provision Business.*—To conduct a store or stores in the buying, selling and dealing of and in meats, provisions, groceries,

dairy products, and in general to carry on a meat, grocery and provision business.

No. 67. *Printers and Publishers.*—To carry on the businesses of printers, engravers, publishers, book and print sellers, bookbinders, and art journalists in all their branches; to carry on the businesses of newspaper and magazine proprietors, news agents, journalists, literature agents, and stationers in all their branches; to carry on the businesses of manufacturers and distributors of and dealers in engravings, prints, pictures, drawings, and any written, engraved, painted or printed productions, in all their branches; to carry on the businesses of advertising agents, advertisement contractors, and designers of advertisements, in all their branches; to carry on the businesses of paper makers, and printing and other ink manufacturers, in all their branches.

No. 68. *Quarry.*—To purchase, mine, quarry, cut, saw, crush, finish, set, and dress stone, marble and other minerals and sell the same to the public.

No. 69. *Roofing Supplies.*—To manufacture and sell ornamental sheet metal work, roofing material and supplies of wood, tile, slate, tin, paper, asbestos, sheet metal or other materials, and lay, erect, construct and sell the same.

No. 70. *Saddlers.*—To carry on the business of manufacturers of saddles, saddlery, harness, traveling trunks, traveling bags, springs, and every description of leather goods, and iron and steel workers, and such other businesses and processes in connection with the above-mentioned business as are customarily carried on in connection therewith, or are naturally incident thereto.

No. 71. *Saw-Mills.*—To carry on business as timber merchants, saw-mill proprietors, and timber growers, and to buy, sell, grow, prepare for market, manipulate, import, export, and deal in timber and wood of all kinds, and to manufacture and deal in articles of all kinds in the manufacture of which timber or wood is used, to purchase and deal in timber limits or concessions, and to carry on business as ship-owners and so far as may be deemed expedient, the business of general merchants, and to cut, clear, plant and work timber estates, and to carry on any other businesses which may seem to the company capable of being conveniently carried on in connection with

any of the above, or calculated directly or indirectly to render profitable or enhance the value of the company's property or rights for the time being.

No. 72. *Sewing Machines.*—To manufacture, buy, sell, use, import, export, deal and trade in sewing machines, motor sewing machines, motors, apparatus, machinery, goods and articles of every description appertaining to the sewing machine and motor business, and also other goods, property and articles useful to the public, and to purchase, own, buy, sell, hold, use and deal in patents, patent rights and all privileges, rights, titles and interest pertaining thereto.

No. 73. *Sheet Metal.*—To manufacture, sell and deal in architectural and ornamental sheet metal, metal fronts, cornices, ceilings, windows and all portions of buildings made of metal, and to make and repair tin, copper, slate, tile and slag roofs.

No. 74. *Stationery.*—To manufacture, deal in and sell both at wholesale and retail, blank books and stationery, paper novelties and paper boxes, including printing, engraving and lithographing necessarily incident thereto, and to conduct a general printing and publishing business.

No. 75. *Stock Breeding.*—To buy, own and sell and use for breeding purposes, horses, cattle, sheep and other stock, and purchase, hold, use and sell such real estate as may be necessary for the purpose of carrying into effect the object above mentioned.

No. 76. *Stoves.*—To carry on the trade or business of manufacturing and selling gas stoves and other stoves of every description, burners, ranges, water heaters, burners of every kind for lighting and heating, gas, water and steam controllers, all kinds of water, gas and steam appliances, and all kinds of sanitary and plumbing supplies.

No. 77. *Tea, Coffee and Cocoa Dealers.*—To carry on the business of manufacturers of and dealers in all kinds of tea, coffee, cocoa, and other food-beverages and preparations. To plant, grow, import, manufacture, blend, and in any way deal in tea, coffee, and cocoa, and other Eastern and colonial products, and to carry on business as planters and merchants, both wholesale and retail, sugar merchants, sweetmeat merchants, refreshment-room proprietors, refreshment contractors, farmers, dairymen, fruiterers, grocers, timber mer-

chants, and as lead-rollers, printers, tobacconists, brokers, importers and dealers in foreign and colonial produce and wares of all kinds, commission agents, shipowners, ship builders, charterers of vessels, dock-owners, warehousemen, and wharfingers, and to deal in articles of all kinds commonly dealt in by persons carrying on any of the businesses aforesaid.

No. 78. *Textiles.*—To manufacture, sell and deal in woolen, worsted, cotton, silk-knit and jute goods, yarns and fabrics and admixtures and by-products thereof, and other materials of a similar character.

No. 79. *Theatrical.*—To erect, equip, lease, operate and manage public halls, opera houses, theatres and places of amusement, and to produce, exhibit and exploit therein attractions of dramatic, operatic, musical and intellectual kinds and nature, and to carry on the business of theatrical proprietors and caterers for and to public entertainment and amusement.

No. 80. *Tools.*—To manufacture machinery tools, parts of machinery and similar articles of commerce from iron, steel, other metals, wood and similar materials, and construct, weld, repair and erect the same.

No. 81. *Trading.*—To conduct and operate a general store or stores and a hotel or hotels, including the manufacture and purchase of supplies therefor, the erection and operation of electric lighting apparatus, apparatus for the manufacture of ice and refrigerating store-houses, and the performance of all other acts and things required to be done in and about the same.

No. 82. *Typewriters.*—To manufacture, traffic and deal in typewriter machines, typewriter parts, duplicating machines, duplicator parts, and typewriting and duplicating supplies, stationery, and all articles connected with the use of typewriting and duplicating machines.

No. 83. *Wagons.*—To build, construct, make, repair, paint and vend wagons, drays, buggies, carriages and vehicles generally; to buy and sell the same, and to perform, do and carry on a general blacksmithing, general carpentering and general repairing business, and to make, repair and sell gear, harness, and carry on a general saddlery business.

No. 84. *Wall Paper.*—To buy, sell, deal in, manufacture and produce window shades, wall papers, wall hangings and other wall coverings and the products and preparations thereof, and for the purposes aforesaid to act as agent and broker in the sale thereof, to make contracts and business arrangements to that end, and in order to perfect the same, to purchase or lease or otherwise take and hold real and personal estate, erect buildings, factories, warehouses, machinery, plant and apparatus necessary for the manufacture and sale of such articles, and for the doing of all lawful acts, deeds and things necessary for the effectual carrying out of the true intent and meaning of this corporation, and the business intended to be carried on by it.

No. 85. *Wearing Apparel.*—To conduct a business for the buying, manufacturing and selling of men's and boys' shirts, pajamas and apparel of cotton, wool, silk, linen and other fabrics; to buy, sell and generally deal in cloaks, suits and other articles of wearing apparel for ladies and children, and all other articles of merchandise of a kindred nature.

No. 86. *Woodenware.*—To manufacture, sell, and deal in iron, tin, chemical, wood, lumber, timber and veneer, and all products of the same, together with all machinery necessary in such manufacture, including woodenware, veneer dishes of all kinds, all articles made of wood pulp and straw-board, placques, chair seats, sofa backs, car finishings and furniture, and for ceiling houses, covering bottles and other articles of glass and clay, for picture backs, wagon boxes, boats and sleighs and other articles, also to construct and repair buildings, and do all things necessary to the carrying on of a general manufacturing business.

ARTICLES OF INCORPORATION.

General Object Clauses.

No. 87. *Power to Acquire Business.*—To acquire the good-will, rights, property and assets of all kinds and to undertake the whole or any part of the liabilities of any person, firm, association or corporation, on such terms and conditions as may be agreed on, and to pay for the same in cash, stocks, bonds, debentures, or other securities of this Corporation or otherwise.

To acquire and undertake all or any part of the business, assets and liabilities of any person, firm, association or corporation.

No. 88. *Power to Acquire Particular Business.*—To acquire and take over as a going concern the business now carried on at No. ..... Street ....., under the firm name of ....., and in connection therewith to purchase the good will, business and all or any of the assets and to undertake or assume all or any of the liabilities of the proprietors of such business.

No. 89. *Patents and Trade Mark Clause.*—To apply for, purchase or otherwise acquire, and to hold, use, sell, assign, mortgage or otherwise dispose of, and to grant licenses in respect of and otherwise turn to account all and any trade marks, trade names, inventions, improvements and processes used in connection with or secured under Letters Patent of the United States or elsewhere or otherwise; and, with a view to the working and development of the same, to carry on any business, whether manufacturing or otherwise, which the corporation may think calculated directly or indirectly to effectuate these objects.

No. 90. *Power to Borrow Money.*—To borrow money, to make and issue promissory notes, bills of exchange, bonds, debentures and obligations and evidences of indebtedness of all kinds, whether secured by mortgage, pledge or otherwise, without limit as to amount, and to secure the same by mortgage, pledge or otherwise.

No. 91. *Power to Issue Bonds.*—To issue bonds, debentures or obligations of the company, from time to time, for any of the objects or purposes of the company, and to secure the same by mortgage or mortgages, or deed or deeds of trust, or pledge, or lien on any or all of the real and personal property, rights, privileges and franchises of the company wheresoever situated, acquired and to be acquired, and to sell or otherwise dispose of any or all of the same, all in such manner and upon such terms as the board of directors may deem proper.

No. 92. *General Contract Clause.*—To enter into, make, perform and carry out contracts with any person or corporation, public or private, and with any Government, relating to any matter or business of this Corporation or in which it may be interested.

No. 93. *General Power Clause.*—To do all and everything necessary, suitable, convenient or proper for the accomplishment of any of the purposes, or the attainment of any one or more of the objects herein enumerated or incidental to the powers herein named or which shall at any time appear conducive or expedient for the protection or benefit of the corporation, either as holders of or interested in, any property or otherwise; with all the powers now or hereafter conferred by the laws of Illinois upon corporations under the act hereinafter referred to.

No. 94. *General Object Clause.*—Without in any particular limiting or restricting any of the objects and powers of the corporation, it is hereby expressly declared and provided that the corporation shall have power to issue bonds and other obligations in payment for property purchased or acquired by it, for money borrowed, or for any other lawful object in and about its business; to mortgage or pledge any property which may be acquired by it; to secure any bonds, guarantees or other obligations by it issued or incurred; to make and perform contracts of every kind and description; and in carrying on its business, or for the purpose of attaining or furthering any of its objects or purposes, to do any and all other things and exercise any and all other powers which now or hereafter may be permitted by law.

No. 95. *Interpretation Clause.*—It is declared that the objects and powers specified and the clauses contained in this paragraph shall be in no wise limited or restricted by reference to or inference from the terms of any other clause of this or any other paragraph in this Certificate of Incorporation.

No. 96.

BOND OF TREASURER OF SOCIETY.

Know all men by these presents, That We .....
as principals, and ..... and .....
as sureties, of the ..... of .....
in the County of ..... and State of .....
are held and firmly bound unto .....
of ..... in the County of ..... State

aforesaid, in the sum of .....Dollars, good and lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves and our heirs, executors and administrators, jointly, severally and firmly by these presents.

Witness Our hands and seals, this ..... day of ..... A. D. 19...

The Condition of This Obligation Is such that, whereas, the above bounden ..... was on the ..... day of ..... A. D. 19.. duly ..... to the office of Treasurer, etc., of ..... for the ..... year ..... ending ..... and is about to assume the duties of said office; now if the said ..... shall well and truly perform the duties of said office of Treasurer during his term of office, and shall safely keep and truly account for all moneys, goods and chattels and other things coming to his hands as such Treasurer during his term of office, and at the expiration of his term of office, shall pay over to his successors in office, or to any other person duly authorized by said ..... to receive the same, all moneys, goods and chattels and other things received by him as such Treasurer, and not otherwise lawfully paid out, and shall deliver to his successor in office, or other person appointed to receive the same, all property, books, papers and other things in his hands belonging to said office, and shall, at the expiration of his term of office or oftener if thereunto requested by the said ..... render a just and true account of his doings as such Treasurer, then this obligation to be void, otherwise to remain in full force, effect and virtue.

.....(SEAL)
.....(SEAL)
.....(SEAL)

Approved This ..... day of ..... A. D. 19...
.....
.....

(The wording of this form can be easily changed to apply to the duties of any officer of a society or corporation.)

No. 97.

FULL PAID CERTIFICATE OF STOCK.

Incorporated under the laws of the State of .....

NUMBER. SHARES.

....

THE ..... COMPANY.

Capital Stock $.....

This Certifies That ..... is the owner of ..... shares of ..... Dollars each of the Capital Stock of THE ..... COMPANY, full paid and non-assessable, transferable only on the books of the Corporation by the holder hereof in person or by Attorney, upon surrender of this Certificate properly indorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this ..... day of ..... A. D. 19...

.....

(SEAL) *President.*

.....

Treasurer.

Shares $..... Each.

Indorsement.

For value received ..... hereby sell, assign and transfer unto .....

.....

shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint .... Attorney to transfer the said stock on the books of the within named Company with full power of substitution in the premises.

Dated ..... 19...

.....

In presence of

.....

[Note: The signature to this assignment must correspond with

the name as written upon the face of the certificate in every particular, without alteration or enlargement, or any change whatever.]

No. 98.

CERTIFICATE OF STOCK PARTIALLY PAID.

Incorporated under the laws of the State of .....

NUMBER. SHARES.

....

THE ..... COMPANY.

Capital Stock $.....

This Certifies That ..... is the owner of ..... shares of ..... Dollars each of the Capital Stock of THE ..... COMPANY, on which has been paid on each share the sum of ..... Dollars, transferable only on the books of the Corporation by the holder hereof in person or by Attorney, upon surrender of this Certificate properly indorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this ..... day of ..... A. D. 19...

.....

President.

.....

Treasurer.

Shares $..... Each.

(Indorse form of transfer, as in No. 97.)

No. 99.

ASSIGNMENT OF SHARES OF CORPORATE STOCK TO BE INDORSED UPON THE BACK OF THE CERTIFICATE.

For value received, I hereby sell, assign and transfer unto .... the shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint ..... my attorney to transfer the said stock

on the books of the within-named company, with full power of substitution and revocation.

(Name and Seal.)

Dated ..... 19...
In presence of
.....
.....

No. 100.

ASSIGNMENT OF STOCK

Know all men by these presents, that I ..... consideration of ..... dollars to me paid by ..... do hereby assign and sell to the said ..... shares of stock in the ..... company, on which there has been paid the sum of $..... per share, and on which there is due the sum of $..... per share; such stock being represented by certificate No. ..... bearing date ..... 19...

Dated this ..... day of ..... 19...

.....(SEAL)

No. 101.

POWER OF ATTORNEY TO TRANSFER STOCK.

Know All Men By These Presents. That ..... of ..... in the State of ..... do ..... hereby irrevocably constitute and appoint ..... of ..... in the State of ..... to be ..... true and lawful attorney, for ..... and in ..... name ..... and behalf, to sell, assign and transfer unto ..... or any other person or persons ..... Shares in the ..... Capital Stock of the ..... standing in my name on the books of the ..... and for that purpose to make and execute all necessary acts of assignment and transfer ..... And further, one or more persons under ..... to substitute with like power.

In Witness Whereof, ... have hereunto set .... hand ..... and seal ..... the ..... day of ..... 19...

..... (SEAL)

Sealed and Delivered in Presence of

.....

No. 102.

AGREEMENT TO SELL STOCK.

This agreement, made the ..... day of ..... 19. between ..... of ....., and ....., also of said place, broker.

Witnesseth, that the said ..... agrees to sell and convey to the said ..... on or before the ..... day of ..... next, ... shares of the capital stock of the ..... Company, now owned and held by the said ....., and standing in his name on the books of the said company, and to make and execute unto the said ....., all assignments, transfers, and conveyances necessary to assure the same to him, his executors, administrators, and assigns.

In consideration whereof, the said ..... agrees to pay unto the said ..... for such stock, ... Dollars per share (or, the average cash market price of the same, for and during ..... days preceding the said ..... day of ..... to be determined by the sales made in the board of brokers in .....), the same to be payable as soon as the said assignment and the scrip of stock so assigned shall be properly executed and delivered to the said .....

In Witness Whereof, the said parties have hereto set their hands (and seals) the day and year first above written.

(Signatures, with or without seals.)

No. 103.

FORM OF COUPON.

THE ..... COMPANY.

Will pay to the bearer on the First day of ..... 19.., at the office of the ..... Trust Company, No. ...., in the City of .....

..... DOLLARS

in Gold Coin of the United States of America, being ..... months' interest then due upon its ..... Per Cent Gold Note, Series ....., No. ....., Due ....., 19...

$..... .....

No. .....

.....

Treasurer.

No. 104.

NOTICE OF PAYMENT OF INTEREST COUPONS.

To The Holders of ..... Company Gold Notes:

The interest coupons due ..... 19.., from the above notes will be paid on and after that date at the office of .... *Trust Company,* ..... Street, Chicago.

.....

President.

No. 105.

NOTICE OF PAYMENT OF SHORT TERM NOTES.

To Holders of Gold Notes Maturing ..... 19..:

The Company will at any time prior to ..... 19.. pay said notes maturing ....., at par with accrued interest to date of payment, upon surrender of said notes, with ..... coupon attached, to ..... *Trust Company,* at its office, ... Street, Chicago.

.....

President.

Dated at Chicago, ... 19...

No. 106.

NOTICE OF MATURITY OF SHORT-TERM NOTES.

..... Company.
Office of the Treasurer.
Room .....

..... 19...

Notice is hereby given that the ..... -Year ..... per cent gold notes of this Company, maturing ....., 19.., will be paid at this office on and after that date.

Coupons should be detached and presented separately.

Checks for interest on registered notes will be mailed as usual.

.....
Treasurer.

No. 107.

COLLATERAL NOTE.

$..... ..... 19...

..... after date ..... promise to pay to the order of ..... at its office in the city of ..... State of .... dollars for value received, with interest at the rate of ..... per cent per annum after date. As collateral security for the payment of this note ..... have deposited with and hereby pledge to said bank ..... and ..... hereby give the said ....., its assign or assigns, authority to sell the same, or any part thereof, on the maturity of this note, or at any time thereafter, or before, in the event of the said securities depreciating in value, at public or private sale, without advertising the same, or demanding payment, or giving notice, and to apply so much of the proceeds thereof to the payment of this note as may be necessary to pay the same, with all interest due thereon, and also to the payment of all expenses attending the sale of the said ..... and in case the proceeds of the sale of the said ..... shall not cover the principal, interest and expenses, ... promise to pay the deficiency forthwith after such sale; and ..... hereby waive and release the holder of this note from all duty and

diligence to sell, enforce, or collect any collateral held with this note. And it is hereby understood and agreed that the collateral upon this note shall be applicable to any other note or claim held by the said ..... or the legal holder hereof, against ..... and in case of the exchange of or addition to the collateral above described, the provisions of this note shall extend to such new or additional collateral.

No. 108.

INDEMNITY BOND FOR LOST NOTE OR BILL.

Know All Men By These Presents, that we ..... of ..... as principal, and ..... of ..... and ..... of ..... as sureties, are held and firmly bound unto ..... of ..... in the sum of ..... Dollars lawful money of the United States or America, to be paid to the said .... or to his certain attorney, heirs, executors, administrators, or assigns, for which payment well and truly to be made we bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that whereas a certain promissory note made by said ..... (obligee), bearing date the ..... day of ..... 19.., in the sum of ..... dollars, payable to the said .... (principal obligee), is alleged to have been lost or destroyed. Now, if the said obligee shall well and truly save harmless and indemnify said obligee, his heirs and personal representatives, against all claims by any other person on account of said promissory note, and against all costs and expenses by reason of such claim, then this obligation to be void; otherwise to remain in full force and virtue.

Sealed with our seals. Dated the ..... day of ..... 19...

No. 109.

BILL OF SALE.

Know all Men by these Presents, That ..... of the City of ....., in the County of ....., and

State of Illinois, party of the first part, for and in consideration of the sum of .....dollars, lawful money of the United States of America, to him in hand paid at or before the ensealing and delivering of these Presents, by ..... of the same place, party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold and delivered, and, by these Presents, does grant, bargain, sell and deliver, unto the said party of the second part, all the following goods, chattels and property, to-wit: .....

.....

To Have and to Hold the said goods, chattels and property unto the said party of the second part, his heirs, executors, administrators and assigns, to and for his own proper use and behoof, forever.

And the said party of the first part, does vouch himself to be the true and lawful owner of the said goods, chattels and property, and have in his full power, good right, and lawful authority, to dispose of the said goods, chattels and property, in manner as aforesaid; And he does for himself and heirs, executors and administrators covenant and agree to and with the said party of the second part, to warrant and defend the said goods, chattels and property to the said party of the second part, his heirs, executors, administrators and assigns against the lawful claims and demands of all and every person and persons whomsoever.

In Witness Whereof, I have hereunto set my hand and seal, the ..... day of ....., in the year one thousand nine hundred and .....

.....(SEAL)

Sealed and delivered in the presence of

.....

.....

State of Illinois, County of ....., ss.

I, ..., a Notary Public in and for said County, do hereby certify, That this instrument was duly acknowledged before me, by the above named ....., this ..... day of ....., A. D. 19...

.....(SEAL)

Notary Public.

No. 110.

CHATTEL MORTGAGE.—SHORT FORM.

Know all Men by these Presents, That ..... and ...., his wife, of the town of ....., in the County of ....., and State of Illinois, in consideration of ..... dollars, to them paid by ..... of the County of ..... and State of Illinois, the receipt whereof is hereby acknowledged, do hereby grant, bargain and sell unto the said ..... and to his heirs and assigns forever, the following goods nd chattels to-wit: .....
.....
.....
..... all contained on the ..... floor of the building known as number ..... Street, ..., Illinois.

To have and to hold, all and singular the goods and chattels unto the said Mortgagee herein, and his heirs and assigns, to their sole use and behoof forever. And the Mortgagors herein, for themselves and for their heirs, executors and administrators, do hereby covenant to and with the said Mortgagee and his heirs and assigns, that said Mortgagors are lawfully possessed of the said goods and chattels, as of their own property; that the same are free from all incumbrances, and that they will warrant and defend the same to him the said Mortgagee and his heirs and assigns, against the lawful claims and demands of all persons.

Provided, Nevertheless, That if the said Mortgagors shall pay their one certain promissory note of even date herewith payable to the order of said ....., on or before ..... years from the ..... day of ....., A. D. 19.., at his office, in ....., Illinois, with interest at the rate of ..... per cent per annum, then this Mortgage shall be void; otherwise to remain in full force and effect.

And Provided Further, That until default be made by the said Mortgagors in the performance of the condition aforesaid, it shall and may be lawful for them to retain the possession of the said goods and chattels, and to use and enjoy the same; but if the same, or any part thereof shall be attached or claimed by any other person

or persons, at any time before payment, or the said Mortgagors, or any person or persons whatever, upon any pretense, shall attempt to carry off, conceal, make way with, sell, or in any manner dispose of the same, or any part thereof, without the authority and permission of the said Mortgagee or his heirs, executors, administrators or assigns, in writing expressed, then it shall be and may be lawful for the said Mortgagee, with or without assistance, or his agent, or attorney, or heirs, executors, administrators, to take possession of said goods and chattels, by entering upon any premises, wherever the same may be, whether in this County or State, or elsewhere, to and for the use of said Mortgagee, his heirs or assigns. And if the moneys hereby secured, or the matters to be done or performed, as above specified, are not duly paid, done or performed at the time and according to the conditions above set forth, then the said Mortgagee or his attorney or agent or his heirs, executors, administrators or assigns, may, by virtue hereof, and without any suit or process, immediately enter and take possession of said goods and chattels, and sell and dispose of the same at public or private sale, and after satisfying the amount due and all expenses, the surplus, if any remain, shall be paid over to the said Mortgagors or their heirs or assigns. The exhibition of this Mortgage shall be sufficient proof that any person claiming to act for the Mortgagee is duly made, constituted and appointed agent and attorney to do whatever is above authorized.

In Witness Whereof, The said Mortgagors have hereunto set their hands and seals this ..... day of ....., in the year of our Lord one thousand nine hundred and .....

.....(SEAL)

.....(SEAL)

Signed, sealed and delivered in presence of

.....

Certificate Of Acknowledgment.

State of Illinois, County of Cook, ss.

I, ..., a Justice of the Peace in the town of ....., in and for said County, do hereby certify that this Mortgage was duly acknowledged before me by the above named ..... and ....., his wife, the Mortgagors

therein named, and entered by me this ..... day of ....., A. D. 19...

Witness my hand and seal,

.....(SEAL)

Justice of the Peace.

No. 111.

CHATTEL MORTGAGE FOR CHATTELS AND HOUSE ON LEASED LAND, WITH HOMESTEAD WAIVER.

This Indenture, Made this ..... day of ....., in the year of our Lord one thousand nine hundred and ....., between ..... (Bachelor), of the City of ....., in the County of ..... and State of ....., party of the first part, and ....., of the City of ....., in the County of ..... and State of Illinois, party of the second part:

Witnesseth, That the said party of the first part, for and in consideration of the sum of ..... dollars, in hand paid, the receipt whereof is hereby acknowledged, does hereby grant, sell, convey and confirm unto the said party of the second part, his heirs and assigns, all and singular the following described goods and chattels, to-wit: The two story frame building, on leased ground, known as number ..... Street, in the City of ....., ... County, Illinois, situate upon lot ..... of block ..... of ..... subdivision of northeast quarter of northwest quarter of section ....., Township ..... North, Range ....., east of the third principal meridian, together with [here describe the goods and chattels] .....

.....

.....

.....

Together with all and singular the appurtenances thereunto belonging, or in any wise appertaining: To have and to hold the same unto the said ....., his heirs, executors, administrators and assigns, to his and their sole use forever. And the said .....,

for himself and his heirs, executors and administrators, does covenant and agree with the said ....., his heirs, executors, administrators and assigns, that he is lawfully possessed of the said goods and chattels, as of his own property; that the same are free from all incumbrances; that he will, and his heirs, executors and administrators, shall warrant and defend the same unto the said party of the second part, his heirs, executors, administrators and assigns, against the lawful claims and demands of all persons, and that he will keep the said goods and chattels insured against loss by fire for the full insurable value thereof, in such companies as the holder of the note hereinafter mentioned may direct, and make the loss, if any, payable to, and deposit the policies with, the holder of said note as further security for the indebtedness hereinafter mentioned.

Provided, Nevertheless, That if the said ....., his heirs, executors, administrators or assigns, shall well and truly pay, or cause to be paid, unto the said ....., his heirs, executors, administrators or assigns, one certain promissory note of even date herewith, payable ..... months after date to the order of ..... at his office in ....., Illinois, with interest at the rate of ..... per cent per annum after date until paid. For value received. Then and from thenceforth these presents, and everything therein contained, shall cease, and be null and void.

And Provided, Also, That it shall be lawful for the said party of the first part, his executors, administrators and assigns, to retain possession of the said goods and chattels, and at his own expense to keep and use the same until he or his executors, administrators or assigns, shall make default in the payment of said sum of money above specified, either in principal or interest, at the time or times, and in the manner hereinbefore stated.

And the said Party of the First Part hereby expressly waives and releases any and all right, benefit, privilege, advantage and exemption, under or by virtue of any and all Statutes of the State of Illinois, providing for the exemption of homesteads from sale on execution or otherwise.

And the said Party of the First Part hereby covenants and agrees that in case default shall be made in the payment of any or either

of the notes aforesaid, or of any part thereof, or the interest thereon, or any part thereof, on the day or days respectively on which the same, or any part thereof, shall become due and payable; or if the party of the second part, his executors, administrators or assigns, shall feel himself insecure or unsafe, or shall fear diminution, removal or waste for want of proper care of said property; or if the party of the first part shall sell or assign, or attempt to sell or assign, the said goods and chattels, or any part thereof, or any interest therein or if any writ issued from any Court, or by any Justice of the Peace, or any distress warrant shall be levied on said goods and chattels, or any part thereof; or if the party of the first part shall fail or neglect to keep the property insured for the further security of the party of the second part, and to deposit the policies, as aforesaid; then, and in any or either of the aforesaid cases, all of said note and sum of money, both principal and interest, shall, at the option of the party of the second part, his executors, administrators or assigns, without notice of said option to any one become at once due and payable, anything in said note or in this mortgage to the contrary notwithstanding; and the party of the second part, his executors, administrators or assigns, or any of them, shall thereupon have the right to take immediate and exclusive possession of said property, and every part thereof, and for that purpose may pursue the same or any part thereof, wherever it may be found, and also may enter any of the premises of the said party of the first part, with or without force or process of law, wherever the said goods and chattels may be, or be supposed to be, and search for the same, and if found, to take possession of, and remove and sell, and dispose of, said property, or any part thereof, at public auction, to the highest bidder, after giving ..... days' notice of the time, place and terms of sale, together with a description of the property to be sold, either by publication in some newspaper in the City of ..... or by similar notices posted up in ..... public places in the vicinity of such sale, or at private sale, with or without notice, for cash, or on credit, as the said ...., his heirs, executors, administrators or assigns, agents or attorneys, or any of them may elect, at any which sale at auction the said Mortgagee, his heirs, executors, administrators or assigns, agent or attorneys, or

either of them, may become the purchasers, and out of the money arising from such sale, to retain all costs and charges for pursuing, searching for, taking, removing, keeping, storing, advertising and selling such property, goods, chattels and effects, and all prior liens thereon, together with the amount due and unpaid upon said note, or any of them, either in principal or interest, rendering the overplus of money arising from such sale (if any there shall be) unto ..... or his legal representatives, which sale or sales so made shall be a perpetual bar, both in law and equity, against the party of the first part, his legal representative and assigns.

Witness the hand and seal of the party of the first part, the day and year first above written.

.....(SEAL)

Signed, sealed and delivered, in the presence of

.....

State of Illinois, County of ....., ss.

I, ..., a Justice of the Peace in the town of ....., in and for said County, do hereby certify that this Mortgage was duly acknowledged before me by the above named, ... (a bachelor), the Mortgagor therein named, and entered by me this ..... day of ....., A. D. 19..; that ..... is personally known to me to be the same person whose name is subscribed to the foregoing Instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said Instrument as his free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and ..... seal, this ..... day of ....., A. D. 19...

.....(SEAL)

Justice of the Peace.

Careful persons require the mortgagors to make an affidavit as to ownership of the goods about to be mortgaged. The following is the usual form adopted.

No. 112.

AFFIDAVIT OF TITLE.

State of Illinois, County of ....., ss.

..... and ....., the undersigned, do solemnly swear that their legal name is ..... and ....., and that they reside at No. ..... Street, ... County of ....., and State of Illinois, and that they are the sole and lawful owners of all the goods and chattels mentioned and described in the within Chattel Mortgage, and executed by them ....., 19.., being the same to which this affidavit is attached and made a part; we do further swear that said goods and chattels, and each of them, are free and clear from all liens and incumbrances, except this one mortgage, given this day to ..... for the sum of ..... dollars, and we do make oath under the pains and penalties of wilful perjury.

And we, the said ..... and ....., have made and do now make the foregoing representations to ..... to receive and obtain from him a loan of money, which the said mortgage hereto attached is given to secure.

(Signed)

.....

.....

Subscribed and sworn before me this ..... day of ....., 19...

....., *J. P.*

No. 113.

RELEASE OF CHATTEL MORTGAGE.

Know all Men by these Presents, That I, ..., of the City of ....., of the County of ..... and State of Illinois, do hereby certify, That a certain indenture of mortgage, bearing date the ..... day of ....., A. D. 19.., made and executed by ..... and ....., his wife, of the first part, to ....., of the second part, conveying certain personal property therein mentioned as security for

the payment of ..... dollars and ..... cents as therein stated and recorded in the recorder's office of ..... County, in the State of Illinois, in Book ..... of Records, on page ....., on the ..... day of ....., A. D. 19.., is, with the note accompanying it, and the aforementioned debt fully paid, satisfied, released, and discharged.

Witness my hand and seal, this ..... day of ....., A. D. 19...

.....(SEAL)

State of Illinois, ... County ss.

I, ... a Notary Public in and for the said County, in the State aforesaid, do hereby certify that ...., personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given, under my hand and notarial seal, this ..... day of ....., A. D. 19...

.....

Notary Public.

[The release should be filed for record by the mortgagor or his heir or legal representative or assigns.]

No. 114.

PROOF OF DEBT AND POWER OF ATTORNEY.

In the District Court of the United States.

For the ..... District of .....Div.

In the Matter of ....., Bankrupt.

No. .....

At ....., in the County of ....., and State of ....., on the ..... day of ....., 19.., came ....., of said County and State, and says:

1. That he hereinafter designates himself as claimant.

2. That he is the Treasurer of ....., a corporation, duly organized, existing and doing business under and by virtue of the laws of the state of ....., and hereinafter designated as claimant.

3. That affiant and ....., are co-partners, trading as ....., and hereinafter designated as claimant.

That said claimant is doing business at the place, County and State aforesaid, and that affiant is duly authorized to make this proof, and execute this power of attorney, and that said bankrupt was, at and before the time the petition in bankruptcy was filed herein, and still is, justly and truly indebted to the said claimant in the sum of ..... That the consideration of said debt is as follows:

Goods, wares and merchandise, sold and delivered to the said bankrupt, at ..... special instance and request, according to statement hereto attached and marked "Exhibit A."

.....

.....

That no part of said debt has been paid, except ..... that there are no offsets or counterclaims to the same except ...., and that this deponent has not, nor has any person for or on behalf of said claimant, or to this deponent's knowledge or belief, for said claimant's use, had or received any manner of security for said debt whatever, nor has any judgment been rendered therefor, or for any part thereof, nor has any note or other evidence of said debt been received, except as herein stated.

.....

.....

Said claimant hereby constitutes and appoints THE CREDIT CLEARING HOUSE, or ....., its substitute indorsed hereon, attorney in fact to join with other creditors and proceed in bankruptcy against the above named debtor, under the provisions of the Act entitled "An Act to Establish a Uniform System of Bankruptcy throughout the United States, approved July 1, 1898," and the amendments thereto, and to execute in the name of the undersigned, any usual or necessary petition or paper in that behalf, and to represent the claimant at all meetings of creditors

herein, with authority to vote for Trustee, also to accept any composition proposed by said bankrupt in satisfaction of ..... debts, and upon all other propositions submitted to the creditors, and to receive dividends and all notices in said cause.

.....

Subscribed and sworn to before me the day and year above mentioned.

.....

Notary Public.

Commission expires ....., 19...

[Instructions:—This affidavit must be made by the claimant personally, if an individual; by the treasurer, if a corporation; by a partner, if a partnership. If the claimant is an individual, fill in (1); if a corporation, fill in (2); if a partnership, fill in (3); and then cancel the other two paragraphs.]

No. 115.

ASSIGNMENT OF ACCOUNT.

Know All Men by these Presents, that ....., of the City of ....., in the County of ....., in the State of Illinois, in consideration of ..... dollars, lawful money of the United States, to him paid before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has sold, assigned, transferred and set over, and by these presents does sell, assign, transfer, and set over unto ....., of the city of ....., in the County of ....., in the State of Illinois, his executors, administrators, and assigns, to his and their own proper use and benefit all his right, title and interest in and to any and all sum or sums of money now due or to become due upon the annexed account, or upon the sales of merchandise, goods and wares, or whatever transactions may be the basis of the account here annexed, and therein mentioned. And I do hereby give the said ....., his executors, administrators and assigns, the full power and authority, for his or their own use or benefit, but at his or their own costs, to ask, demand, collect, receive, compound, sue for, and give acquittance for the same, or any part

thereof, and in his name or otherwise to prosecute and withdraw any suits or proceedings at law or in equity therefor.

In Witness Whereof, I have hereunto set my hand and seal ...., this ..... day of ....., A. D. 19...

.....(SEAL)

In presence of

.....

———

State of Illinois, County of ..... ss.

I, ..., a Notary Public in and for, and residing in, the County of ....., in the State aforesaid, do hereby certify, that ....., personally known to me, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this ..... day of ....., A. D. 19...

.....

(SEAL) *Notary Public.*

No. 116.

ASSIGNMENT OF JUDGMENT.

This Indenture, made the ..... day of ....., one thousand nine hundred and ....., between ....., of the City of ....., County of ....., and State of Illinois, party of the first part, and ....., of the City of ....., County of ....., and State of Illinois, of the second part:

Witnesseth, Whereas, the said party of the first part, on the..... day of ....., one thousand nine hundred and ....., recovered a judgment in the Circuit Court of .....County against ....., of the City of ....., County of ....., and State of Illinois, for ..... dollars, and costs of suit, as will by the record thereof more fully appear.

Now This Indenture Witnesseth, that the said party of the first part, in consideration of ..... dollars, to him duly paid, before the sealing and delivery of these presents (the receipt

whereof is hereby acknowledged), has sold, assigned, transferred, and set over, and, by these presents, does sell, assign, transfer, and set over unto the said party of the second part, and his assigns, the said judgment, and any and all sum and sums of money that may be had or obtained by means thereof, or on any proceedings to be had thereupon.

And the said party of the first part, does hereby constitute and appoint the said party of the second part, and his executors, administrators, and assigns, his true and lawful attorney, irrevocable, with power of substitution and revocation, for him and in his name, and in the name and names of his executors and administrators, but for the sole use and benefit of the said party of the second part, and at his own costs and charges, to ask, demand, and receive, and to sue out executions, and other writs, and take all lawful ways for the recovery of the money due, or to become due, on the said judgment, and, on payment, to acknowledge satisfaction, or discharge the same: And attorneys, one or more, under him for the purpose aforesaid, to make and substitute, and the same, at pleasure, again to revoke: hereby ratifying and confirming all that the said attorney, or substitute, shall lawfully do in the premises.

And the said party of the first part does covenant, that there is now due on the said judgment, the sum of ..... dollars, besides interest and costs, and that he will not collect or receive the same, or any part thereof, nor release or discharge the said judgment, but will own and allow all lawful proceedings therein, the said party of the second part saving the said party of the first part harmless of and from any costs and charges in the premises.

.....

.....

..... (SEAL)

Sealed and Delivered in the Presence of

.....

.....

No. 117.

AFFIDAVIT FOR ATTACHMENT.

State of Illinois, County of ....., ss.
Circuit Court of ..... County.

....., being duly sworn, deposes and says: That

..... is indebted to him after allowing all just credits and set offs, in the sum of ..... dollars, upon merchandise sold and delivered to the said .....; and affiant further states that upon diligent inquiry deponent has not been able to ascertain his place of residence, and he is about fraudulently to conceal, assign or otherwise dispose of his property or effects so as to hinder or delay his creditors, and further deponent sayeth not.

.....

Subscribed and sworn to before me, this .....day of ..... A. D. 19...

.....

Clerk.

No. 118.

AFFIDAVIT FOR ATTACHMENT.

State of Illinois, County of ....., ss.
Circuit Court of ..... County.

....., being duly sworn, deposes and says: That ..... is indebted to him after allowing all just credits and set-offs, in the sum of ..... dollars and ..... cents, upon merchandise sold and delivered to the said ..... at his request; and affiant further states that said ..... is not resident of this State, and that his place of residence is at..... ....., in the State of ....., and that said defendant has within ..... years last past, fraudulently conveyed or assigned his effects, or a part thereof, so as to hinder and delay his creditors, and further deponent sayeth not.

.....

Subscribed and sworn to before me, this ..... day of ..... A. D. 19...

.....

Clerk.

No. 119.

AFFIDAVIT FOR ATTACHMENT.

State of Illinois, County of ....., ss.
In the Circuit Court of ..... County.

..... being duly sworn, deposes and says that ..... is indebted to him after allowing all just credits and set-offs, in the sum of ..... dollars, upon goods, wares and merchandise sold and delivered to him, and affiant further states that the said ..... conceals himself so that process cannot be served upon him, and is about to depart from this State, with the intention of having his effects removed from this State, and is about to remove his property from this State to the injury of the said ....., and further deponent sayeth not.

.....

.....

Subscribed and sworn to before me, this ..... day of ....., A. D. 19....

.....

Clerk.

No. 120.

ATTACHMENT BOND.

Know all men by these Presents, That we, ... and ....., are held and firmly bound unto ..... in the penal sum of ..... dollars, lawful money of the United States, for the payment of which said sum, well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally, by these presents.

The Condition of the above Obligation is such, That, whereas, the above bounden ..... has, on the day of the date hereof, prayed an Attachment out of the Circuit Court of..... County, at the suit of himself against the Estate of the above named

....., for the sum of ..... Dollars, and the same being about to be sued out of said Court, returnable on the ..... Monday of ....., A. D. 19...., to the Term of the said Court then to be holden; Now, if the said ..... shall prosecute his said suit with effect, or in case of failure therein, shall well and truly pay and satisfy the said ..... all such costs in said suit, and such damages as shall be awarded against the said ....., his Heirs, Executors or Administrators, in any suit or suits which may hereafter be brought for wrongfully suing out the said Attachment—then the above obligation to be void; otherwise to remain in full force and effect.

Signed with our Seals and Dated this ..... day of ....., 19..

..... (SEAL)

Approved, ... (SEAL)

.....

Clerk.

No. 121.

ATTACHMENT WRIT.

State of Illinois, ...County, ss.

The People of the State of Illinois, To the Sheriff of..... County, Greeting:

Whereas, ..., hath complained that ....., the defendant, is justly indebted to ....., plaintiff, to the amount of ..... Dollars, and that the said defendant conceals himself so that process cannot be served upon him, and is about to depart from this State, with the intention of having his effects removed from this State and is about to remove his property from this State to the injury of the said .....: And the said plaintiff having given bond and security according to law:

We Therefore Command You, that you attach so much of the estate, real or personal, of the said Defendant ..... to be found in your County, as shall be of value sufficient to satisfy the said debt and costs, according to the complaint; and such estate

so attached in your hands, to secure, or so to provide that the same may be liable to further proceeding thereupon according to law, and that you summon the said defendant ..... to appear and answer the complaint of the said plaintiff at a term of said Circuit Court of ..... County to be holden at ....., in the County of ....., upon the ..... day of ....., A. D. 19...., and that you also summon ....., and such other persons as you shall be required by the said plaintiff as garnishees to be and appear at the said Court on the said ..... day of ....., A. D. 19...., then and there to answer to what may be objected against them, when and where you shall make known to the said Court how you have executed this Writ. And have you then and there this Writ.

Witness, ..., Clerk of the said Court, and the seal thereof, at ....., in said County, this ..... day of ....., A. D. 19....

.....

Clerk.

No. 122.

AGREEMENT WITH BROKER.

..... hereby agree to maintain with you at all times a margin of ..... per centum of the par value of all stocks and bonds against which you have made or may hereafter make advances to ....., and a like margin on stocks or bonds which ..... have borrowed or may hereafter borrow through you to make deliveries on sales made for ..... account or otherwise.

In case .....margin should become impaired and the same is not promptly made good in response to personal notice or notice sent by wire or letter and directed to ..... usual address, you are authorized in your discretion to buy or sell at the ..... Stock Exchange or at public or private sale, without further notice, such certificates as may be necessary to place the account in condition satisfactory to you, or to close the same entirely, as you may prefer.

In case of my decease you are hereby authorized to close my account by purchase or sale of securities ..... as the same may require.

No. 123.

EXTENSION INTEREST NOTE.

$ ...., 19...

Due to the order of .....
..... Dollars in gold coin of the United States of the present standard of weight and fineness, on the ..... day of ..... A. D. 19..., without grace, at ..... in the City of ....., in the State of ....., as the holder of the principal note may from time to time appoint, and in default of such appointment, then at the office of ..... in the City of ..... State of ....., with interest after maturity until paid, at the highest rate which it is now in such case lawful to contract for, payable in like gold coin, being for an installment of interest on ..... principal note ..... dated the ..... day of ....., A. D. 19...., for the sum of ..... Dollars, the time of payment whereof having been extended to the ..... day of ....., A. D. 19....

.....
.....

No. .....
(Preserve this note until release is given.)

No. 124.

ADVERTISEMENT OF BONDS.

THE ..... COMPANY
First Mortgage ..... % Gold Bonds.
Due ..... 19...

Callable as a whole or in part on any interest date after 19..., at ..... and interest. Largest manufacturer of .....

in the world. Total assets nearly ..... times entire out-standing funded debt. Average net profits last ..... years nearly ..... times present interest charges. Price to yield about .....%.

..... & Company.
New York, Boston, Chicago.

No. 125.

NOTICE OF REDEMPTION OF BONDS.

Office of
The ..... Company .....

Owners of bonds of the ..... Company, are hereby notified that the ..... Trust Company, of ..... Trustee, has designated by lot bonds numbered .....
.....
to be redeemed as required by the mortgage on account of Sinking Fund payment due ..... 19... Said bonds to be redeemed at ..... Bank, No. ..... Street, ...

Interest on bonds designated as above will cease .....
..... 19...

The ..... Company,
.....
Secretary.

No. 126.

CHATTEL MORTGAGE OF CORPORATION TO INDIVIDUAL—SHORT FORM.

Know All Men By These Presents, That ..... a corporation created and existing by virtue of the laws of the State of ..... and doing business in the State of ..... in consideration of the sum of ..... Dollars, to it paid by ..... of the County of ..... and State of ..... the receipt whereof is hereby acknowledged, doth hereby grant, sell, convey and confirm, unto the said ..... and to

..... heirs and assigns, the following goods and chattels, to-wit: .....
.....
.....
.....

To have and to hold all and singular the said goods and chattels, unto the said mortgagees ..... herein, and ..... heirs, executors, administrators and assigns to ..... and their sole use, *forever.* And the mortgagor herein for itself, its successors and assigns does hereby covenant to and with the said mortgagee ..... heirs, executors, administrators and assigns, that said mortgagor is lawfully possessed of the said goods and chattels, as of its own property; that the same are free from all encumbrances, and that it will, and its successors shall warrant and defend the same to ..... the said mortgagee ..... heirs, executors, administrators and assigns, against the lawful claims and demands of all persons.

Provided Nevertheless, That if the said mortgagor, its successors or assigns, shall well and truly pay unto the said mortgagee .... executors, administrators, or assigns
.....
.....
.....
then this mortgage is to be void, otherwise to remain in full force and effect.

And provided also, That it shall be lawful for the said mortgagor, its successors and assigns, to retain possession of the said goods and chattels, and at its own expense, to keep and use the same until it or its successors or assigns, shall make default in the payment of the said sum of money above specified, either in principal or interest, at the time or times, and in the manner hereinbefore stated. And the said mortgagor hereby covenants and agrees that in case default shall be made in the payment of the note ..... aforesaid, or of any part thereof, or the interest thereon, on the day or days respectively on which the same shall become due and payable, or if the mortgagee ..... executors, administrators or assigns, shall feel ..... insecure or unsafe, or

shall fear diminution, removal, or waste of said property; or if the mortgagor shall sell or assign, or attempt to sell or assign, the said goods and chattels, or any interest therein; or if any writ, or any distress warrant, shall be levied on said goods and chattels, or any part thereof; then, and in any or either of the aforesaid cases, all of said note ..... and sum of money, both principal and interest, shall, at the option of the said mortgagee ..... executors, administrators or assigns, without notice of said option to any one, become at once due and payable, and the said mortgagee ..... executors, administrators or assigns or any of them, shall thereupon have the right to take immediate possession of said property, and for that purpose, may pursue the same whatever it may be found, and may enter any of the premises of the mortgagor with or without force or process of law, wherever the said goods and chattels may be, or be supposed to be, and search for the same, and if found, to take possession of, and remove, and sell, and dispose of the said property, or any part thereof, at public auction, to the highest bidder, after giving ..... days' notice of the time, place and terms of sale, together with a description of the property to be sold, by notices posted up in three public places in the vicinity of such sale, or at private sale, with or without notice, for cash or on credit, as the said mortgagee..... heirs, executors, administrators or assigns, agents or attorneys, or any of them, may elect; and, out of the money arising from such sale, to retain all costs and charges for pursuing, searching for, taking, removing, keeping, storing, advertising, and selling such goods and chattels, and all prior liens thereon, together with the amount due and unpaid upon said note ..... rendering the surplus if any remain unto said mortgagor, or its legal representatives.

In testimony whereof, The said mortgagor hath hereunto caused its corporate seal to be affixed, and these presents to be signed by its ..... President, and attested by its .... Secretary, this ..... day of ..... in the year of our Lord nineteen hundred .....

By .....

President

Signed, Sealed and Delivered
in presence of
.....
.....
Attest:

.....
Secretary.

STATE OF ....., County of..... ss.

I, ... a justice of the peace of the Town of ..... in and for said county, in the State aforesaid do hereby certify that ..... personally known to me to be the ..... President of the ..... Company and .... personally known to me to be the .... Secretary of said Company, whose names are subscribed to the foregoing Chattel Mortgage as such President and Secretary, appeared before me this day in person and severally acknowledge that as such ..... President and ..... Secretary, they signed and delivered the said Chattel Mortgage as ..... President and ..... Secretary of said Company, and caused the Corporate Seal of said Company to be affixed thereto, pursuant to authority given by the Board of ..... of said Company, as their free and voluntary act, and as the free and voluntary act and deed of said Company, for the uses and purposes therein set forth, and that said Chattel Mortgage was entered by me this .....day of ..... A. D. 19....

Witness my hand and seal.

.....(SEAL)
Justice of the Peace.

No. 127.

RELEASE OF MORTGAGE BY CORPORATION

Know all men by these presents, That the .....
.....

a corporation existing under the laws of the State of Illinois, for and in consideration of ..... dollar, and for other good and valuable considerations, the receipt whereof is hereby confessed, does hereby Remise, Convey, Release and Quit-Claim unto ..... of the County of ..... and State of Illinois, all the right, title, interest, claim or demand whatsoever it may have acquired in, through or by a certain mortgage deed bearing date the ..... day of ....., A. D. 19...., and recorded in the Recorder's office of ..... County, in the State of Illinois, in Book ..... of Records, on page ....., as Document No. ..... to the premises therein described, situated in the County of .... and State of Illinois, as follows, to-wit: .....
.....
.....
.....

In testimony whereof, The said ..... hath hereunto caused its corporate seal to be affixed, and these presents to be signed by its ..... President, and attested by its .....Secretary, this ..... day of ....., A. D. 19....

.....
By .....
President.

By .....
Secretary.

Attest: .....
(SEAL)

STATE OF ...., County, ss.

I, ... in and for said County in the State aforesaid, do hereby certify that ..... personally known to me to be the ..... President of the ..... and ..... personally known to me to be the ..... Secretary of said ..... whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such .....

President and ..... Secretary, they signed and delivered the said instrument of writing as ..... President and ..... Secretary of said ..... and caused the corporate seal of said .... to be affixed thereto, pursuant to authority given by the Board of ..... of said .... as their free and voluntary act, and as the free and voluntary act and deed of said ..... for the uses and purposes therein set forth.

Given Under my hand and ..... seal this .....day of ....., A. D. 19....

.....

.....

(SEAL)

No. 128.

WARRANTY DEED BY CORPORATION TO INDIVIDUAL—LONG FORM

This indenture, Made this ..... day of ..... in the year of our Lord One Thousand Nine Hundred .... between ..... a corporation created and existing by virtue of the laws of the State of ..... and doing business in the State of .... party of the first part, and ..... of the ..... of ....., in the County of ..... and State of ....., party of the second part;

Witnesseth, That the said party of the first part, for and in consideration of the sum of ..... Dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, has granted, bargained, sold, remised, released, conveyed, aliened and confirmed, and by these presents does grant, bargain, sell, remise, release, convey, alien and confirm, unto the said party of the second part, and to ..... heirs and assigns forever, all the following described lot ....., piece .....

or parcel ..... of land, situated in the ..... of ..... County of ..... and State of ..... and known and described as follows, to-wit: .....
.....
.....
.....

Together with all and singular The hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim or demand whatsoever, of the said party of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances; to have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part ..... heirs and assigns forever.

And The said .....
party of the first part, for itself and its successors, does covenant, grant, bargain and agree, to and with the said party of the second part, ... heirs and assigns, that at the time of the ensealing and delivery of these presents, it is well seized of the premises above conveyed, as of a good, sure, perfect, absolute and indefeasable estate of inheritance in law, in fee simple, and has good right, full power, and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and encumbrances, of what kind or nature soever; and the above bargained premises, in the quiet and peaceable possession of the said party of the second part, ...
..... heirs and assigns, against all and every other persons or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend. .....
.....
.....
.....

This deed is executed pursuant to authority given by the Board of ..... of said Company.

In testimony whereof, The said ..... Company hath hereunto caused its corporate seal to be affixed, and these presents to be signed by its ..... President, and attested by its ..... Secretary, the day and year first above written.

.....
By .....
President.

Attest:
.....
Secretary.

Signed, sealed and delivered
in presence of
.....
.....

(Add Acknowledgment.)

No. 129.

QUIT CLAIM DEED—BY CORPORATION TO INDIVIDUAL —LONG FORM

This indenture, Made this ..... day of ..... in the year of our Lord One Thousand Nine Hundred ..... between .....
a corporation created and existing by virtue of the laws of the State of ..... and doing business in the State of ..... party of the first part and .....
.....
of the ..... of ..... in the County of ..... and State of ..... party of the second part:

Witnesseth, That the said party of the first part, for and in consideration of the sum of ..... Dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever

released and discharged therefrom, has remised, released, sold, conveyed, and quit-claimed, and by these presents does remise, release, sell, convey and quit-claim, unto the said party of the second part, ... heirs and assigns forever, all the right, title, interest, claim and demand which said party of the first part has in and to the following described lot ....., piece ....., or parcel ..... of land, situated in the ..... of ..... County of ..... and State of ..... and known and described as follows, to-wit:

.....

.....

.....

.....

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in any wise thereunto appertaining; and all the estate, right, title, interest, and claim whatever, of the said party of the first part, either in law or equity, to the only proper use, benefit and behoof of the said party of the second part, ... heirs, and assigns forever.

This deed is executed pursuant to authority given by the Board of ..... of said Company.

In testimony whereof, The said ..... Company hath hereunto caused its corporate seal to be affixed, and these presents to be signed by its ..... President, and attested by its ..... Secretary, the day and year first above written.

.....

By .....

President.

Attest:

.....

Secretary.

Signed, sealed and delivered
in presence of

.....

.....

(Add acknowledgment.)

No. 130.

BOND TO A CORPORATION.

Know all men by these presents, that I, ..., of ....., in the county of ....., and State of ....., merchant, am held and firmly bound unto (here insert the true title of the corporation—e. g., thus:) the ..... bank of ..... in the city of ....., and state of ....., in the sum of ..... dollars (inserting the penal sum), good and lawful money of the United States, to be paid to the said ..... bank of ....., its successors, or assigns; for which payment, well and truly to be made, I do bind myself, my heirs, executors and administrators, firmly by these presents.

The condition of the above obligation is such, that if the above bounden ....., his heirs, executors, or administrators, shall well and truly pay, or cause to be paid, unto the above-named (here insert title of corporation), its successors or assigns, the just and full sum (etc., stating the sum to be paid, etc.)

Sealed with my seal. Dated this ..... day of ..... 19...

(Signature and Seal.)

In presence of

.....

.....

(Acknowledgment.)

No. 131.

BOND OF AGENT OF CORPORATION.

Know all men by these presents, That we, James J. Smith, as principal, and Charles A. Young, J. G. Jones, and George W. Johnson, as sureties, are held and firmly bound unto the Chicago and Northwestern Railroad Company in the sum of ..... dollars, for the payment of which well and truly to be made we bind ourselves, our heirs, executors, and administrators firmly by these presents. The condition of this obligation is such that if the said

James J. Smith shall well, truly, faithfully perform the duties required of him by said company as pay-master, and promptly pay over and promptly account for all moneys belonging to said company which shall be received by him as such agent, and shall deliver over to said company all property of said company when required, then this bond to be void; otherwise to be in full force and effect.

Witness our hands the ..... day of ..... 19..

JAMES J. SMITH,
Principal.
CHARLES A. YOUNG,
J. G. JONES,
GEORGE W. JOHNSON,
Sureties.

Approved: G. D. GOULD, *Treasurer.*

No. 132.

ASSIGNMENT BY A CORPORATION.

Know all men by these presents, that the ..... Company, of ....., a corporation organized under the laws of the state of ....., and having a principal office at ....., in said state, in pursuance of a resolution of the directors of the said company, passed on the ..... day of ....., 19.., in consideration of ..... dollars to it paid before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has sold, assigned, transferred, and set over and by these presents does sell, assign, transfer, and set over, unto ....., of ....., all the shafting, machinery, tools, dies, moulds, furniture, and fixtures belonging to it, and contained in its factory building at .....; also all the stock and material of every kind, whether in a raw, manufactured, or partially manufactured state; all farm produce and farming implements, and all office and household furniture,

and fixtures of every kind, belonging to it and contained in its building, and on its premises at ..... and in its office at .....; together with all goods and merchandise belonging to it on the ..... day of ....., 19..., in the hands of (naming any agents of the company holding its goods for sale).

For a more full and accurate description of the property hereby conveyed, reference is made to an inventory of said property, bearing date on the ..... day of ....., 19..., and contained in the inventory book of said company (or otherwise designate the inventory).

In witness whereof, said company has caused these presents to be signed in its name, by its president, and sealed with its corporate seal, attested by its secretary, this .....day of ....., 19...

In presence of:

(Witness's name.)

.....Company

By .....

President.

(Corporate Seal.)

.....

Secretary.

No. 133.

ASSIGNMENT OF ACCOUNT BY CORPORATION.

Know all men by these presents, That the ..... Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois, in consideration of the sum of ..... Dollars ($.....), receipt whereof is hereby acknowledged, to-wit, in hand paid by ....., does hereby assign, transfer and set over to the said .... and his assigns, all of its right, title and interest, in and to the account and indebtedness of..... doing business as ....., with and to the said ..... Company, which said account and indebtedness amounts to the sum of ..... Dollars.

In witness whereof, said The ..... Company has caused its corporate name to be hereunto signed by its President, and its corporate seal to be hereunto affixed, this ..... day of ....., A. D. 19...

.....

By .....

President.

No. 134.

BILL OF SALE BY A CORPORATION.

Know all men by these presents, That the ..... Company, a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, and having an office in the County of ....., in the State of Illinois, in consideration of the sum of ..... Dollars to it in hand paid by ..... of ..... in the County of ..... and State of ....., the receipt of which is hereby acknowledged, does hereby grant, sell, transfer and deliver unto the said ....., the following goods and chattels, namely:

(Insert description of goods sold.)

To have and to hold all and singular the said goods and chattels to the said ....., his administrators, executors and assigns to their own use and behoof forever.

And said, the ..... hereby covenants with the said ....., grantee, that it is the lawful owner of the said goods and chattels; that they are free from all incumbrances; that it has good right to sell the same as aforesaid; and that it will warrant and defend the same against the lawful claims and demands of all persons.

In witness whereof, said the ..... Company has caused these presents to be signed by ..... its President, and its corporate seal to be hereunto affixed, this .... day of ....., 19...

.....

By .....

President.

Attest:

.....

Secretary.

No. 135.

ESCROW AGREEMENT.

I, ..., Vendor, hereby agree to sell to ....., Purchaser, and I .....Purchaser, hereby agree to buy of said ..... Vendor, the following described property: (insert description of property).

The agreed consideration of said sale is $..... cash in hand paid, the receipt whereof is hereby acknowledged: $..... to be paid within ..... days from the date hereof, and $..... within ..... days from such date, making a total consideration of $.....

Said vendor within ..... days from date will deliver to purchaser, or his attorney, an abstract of title duly certified by some reputable abstract office or trust company, together with all the original title papers which are in his possession or within his power to produce.

And within said time will place in escrow in the ..... Bank of ..... a good and sufficient warranty deed conveying to said ..... purchaser, or such person as he shall nominate, the said above described premises clear of encumbrance, to be by such bank held in escrow until final payment be made under this contract, or until default is made under the same. Deposit in said bank to the credit of vendor shall be equivalent to payment of any said instalments. If any instalment or instalments herein provided to be paid shall not be paid within the time or times hereby limited therefor, all previous instalments shall be and remain the property of said vendor, the said deed so deposited in escrow shall be returned to him for cancellation, and the property shall remain his own, unaffected and unencumbered by this contract. But if he shall fail to deliver such abstract within said period, as hereinbefore provided, or to deposit said deed in escrow, or if his title shall prove encumbered or otherwise not market-

able, the said vendee may recover any and all instalments paid, or may sue for specific performance and for a perfect title, or for damages or otherwise as he may be advised.

Time shall be the essence of this contract in all particulars.

Witness the hands and seals of said parties this ..... day of ....., A. D. 19...

..... (SEAL)

..... (SEAL)

Witnessed by

.....

.....

(Add acknowledgment.)

No. 136.

EMPLOYEE'S CONTRACT.

Agreement, Made between ..... and .....

Witnesseth, ... hires and employs the said ..... in his business in the manufacture of .... in the capacity of foreman and agrees to pay him during the time he shall remain in such employment, ... Dollars per week all upon the terms and conditions of this agreement.

The said ..... does agree to and with the said ..... that he will devote his entire time, skill, labor, and attention to said employment, during the time for which he may be so employed, at the wages aforesaid.

It is expressly provided and agreed between the parties hereto, that said ....., may, at any time, terminate said employment, at his election, upon payment to him of what may be coming to him, at the rate aforesaid, on the evening of the day of his actual discharge.

Of the cause for discharge, said ..... shall be the sole judge.

Any agreement or arrangement by which the said ..... has been heretofore employed by said ..... is, in

further consideration of the premises, canceled, released and discharged at this date.

....., 19...

.....(SEAL)

.....(SEAL)

No. 137.

NOTICE OF ANNUAL MEETING.

General Office:

.....

.....

....., 19...

To the Stockholders of.....

The annual meeting of the stockholders of ..... will be held at ....., Illinois, on ..... the ..... day of ..... 19.., at ..... o'clock ... M., for the election of directors for the ensuing year, and for the transaction of such other business as may properly come before the meeting.

Stock transfer books will be closed from the evening of ....., 19.., and reopen on the morning of ..... 19...

Inclosed are proxies, one of which we would thank you to sign and return. In the event that you are present at the meeting and desire to do so, you can withdraw your proxy and vote in person.

.....

Secretary.

No. 138.

NOTICE OF ANNUAL MEETING (ANOTHER FORM).

The Annual Meeting of the Stockholders of ..... will be held at the office of the Company in ....., ... Street, on ....., ..., 19.., at ..... o'clock. The transfer books will close in accordance with the by-laws at the close of business on .... 19.., and will reopen ....., ..., 19.., at ..... o'clock.

.....

President.

No. 139.

NOTICE OF ELECTION OF DIRECTORS

THE ..... COMPANY.

General Office, ...

....., ..., 19...

The Annual Election of this Company will be held on ..... the ..... day of ....., 19.., at its General Office, ..., between the hours of ..... o'clock ... M., and ..... o'clock ... M., for the election of ..... Directors to serve for the term of ..... years, to succeed those whose term will expire with said election; at which time and place a vote, or votes, may also be taken on such other subject, or subjects, as shall have been theretofore directed by the Stockholders.

.....

Secretary.

No. 140.

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS TO AUTHORIZE CORPORATE MORTGAGE.

A special meeting of the stockholders of ..... to act upon a proposal to authorize a mortgage of all or part of the Company's properties and franchises to secure an issue of bonds, to an aggregate principal amount not to exceed at any one time .... Dollars, and the issue and disposition of such bonds in order to retire existing bonds and for other corporate purposes, and upon any matters relating thereto, will be held at the office of the Company at No. ...., on the ..... day of ..... at ..... o'clock in the ..... noon.

The stock transfer books of the company will be closed at the close of business on ..... 19.., and will be reopened at ..... o'clock A. M. on ....., 19...

Dated ..... 19...

.....

By order of the Executive Committee.

.....

Secretary.

No. 141.

PROXY FOR ANNUAL MEETING OF STOCKHOLDERS.

THE ..... COMPANY.

Know all men by these presents, That the undersigned stockholder of the ..... Company, hereby constitutes and appoints ....., ... and ....., or either of them, the attorney and proxy of the Undersigned, to attend and represent the Undersigned at the Annual Meeting of the stockholders of the ..... Company to be held on the ..... day of ....., 19.., and at all adjournments thereof, and for and on behalf of the Undersigned to vote according to the number of shares of the stock of said Company which the Undersigned would be entitled to vote if there personally present, hereby ratifying and confirming all that said attorneys and proxies shall do in the premises, and giving and granting unto said attorneys and proxies full power of substitution and revocation.

Dated ....., 19...

.....

Stockholder.

Signed in the presence of

.....

No. 142.

PROXY FOR LIMITED PERIOD.

Know all men by these presents, that I ..... of ..... hereby appoint ..... to be my substitute and proxy for me and in my ..... name and behalf to vote at any election by the stockholders of the .... Company for directors, or other purposes, occurring within ..... months from the date hereof, and also to vote on any and all matters and questions which may be presented and considered at any annual or special meeting of the stockholders of said company occurring within said period, as fully and with like effect as I, ..., might or could have done if I had been personally present and voting thereat.

In witness whereof, I, ... have hereunto set my ..... hand and seal this ..... day of ....., 19...

.....

No. 143.

FORM OF REVOCATION OF PROXY.

Know all men by these presents, That I ..... being the owner of ..... shares of stock in the ..... Company, a corporation organized and existing under the laws of the State of Illinois, do hereby revoke and annul any and all proxies or powers of attorney heretofore at any time given by me as far as the same may authorize or empower any person or persons to represent me, vote in my name and stead, or act for me in any way whatsoever at any meeting or meetings whatsoever of the stockholders of said ..... Company.

Witness my signature and seal this ..... day of ...., 19...

.....(SEAL)

In presence of

.....

.....

No. 144.

FORM OF GENERAL POWER OF ATTORNEY.

Know all men by these presents, That I have made, constituted, and appointed, and by these presents do make, constitute, and appoint ....., true and lawful attorney for me and in my name, place, and stead, and for my use and benefit: to ask, demand, sue for, recover, collect, and receive all such sums of money, debts, dues, accounts, legacies, bequests, interests, dividends, annuities, and demands whatsoever, as are now or shall hereafter become due, owing, payable, or belonging to me, and have, use, and take all lawful ways and means, in my name or otherwise, for the recovery thereof, by attachments, arrests, distress, or otherwise, and to compromise and agree for the same, and acquittances or other sufficient

discharges for the same; for me and in my name, to make, seal and deliver; to bargain, contract, agree for, purchase, receive, and take lands, and all deeds and other assurances in the law therefor, and to lease, let, demise, bargain, sell, remise, release, convey, mortgage, and hypothecate lands, tenements, and hereditaments upon such terms and conditions, and under such covenants as ..... shall think fit. Also, to bargain and agree for, buy, sell, mortgage, hypothecate, and in any and every way and manner deal in and with goods, wares, and merchandise, choses in action, and other property in possession or in action, and to make, do, and transact all and every kind of business of what nature and kind soever, and also for me and in my name, and as my act and deed, to sign, seal, execute, deliver, and acknowledge such deeds, leases and assignments of leases, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter parties, bills of lading, bills, bonds, notes, receipts, evidences of debt, releases and satisfaction of mortgage, judgment and other debts, and such other instruments in writing, of whatever kind and nature, as may be necessary or proper in the premises. Giving and granting unto ..... said attorney, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present, I hereby ratifying and confirming all that ....., said attorney ..... shall lawfully do or cause to be done by virtue of these presents.

In witness whereof, I have hereunto set my hand and seal the ..... day of ....., one thousand ..... hundred and .....

.....(SEAL)

Signed, Sealed and Delivered in the Presence of:

.....

.....

No. 145.

REVOCATION OF POWER OF ATTORNEY.

Know all men by these presents, That, Whereas, ...

.....

of ..... in the State of ..... by a certain instrument of writing, or Letters of Attorney, bearing date the ..... day of ....., A. D. 19.., did constitute and appoint ..... of ..... in the State of ..... true and lawful attorney ..... for ..... and in ..... and for ..... use to .....
.....
.....
.....

as by the said instrument or letter of attorney, reference being had thereto, will more fully appear.

Now, know ye, that ..... the said ..... have recalled, revoked, countermanded, annulled, and made void, and by these presents do recall, revoke, countermand, annul, and make void, to all intents and purposes, the said Letter of Attorney above mentioned, and all power and authority thereby given, or intended to be given, to the said ..... and all acts and things which shall or may be done by virtue thereof, in any manner whatsoever.

In witness whereof, ... have hereunto set ..... hand ..... and seal ..... this ..... day of ....., in the year of our Lord 19...

..... (SEAL)
..... (SEAL)

No. 146.

DIVIDEND RESOLUTION.

Resolved, That a dividend of ..... per cent on the capital stock of the corporation, amounting to $....., be and the same is hereby declared out of the surplus earnings of the corporation, payable to the stockholders of the corporation in proportion to their respective holdings of stock, on the ..... day of ....., 19...

No. 147.

NOTICE OF DIVIDEND.

Notice is hereby given that a dividend of ..... per cent (.....%) has been declared on the capital stock of this company, payable on ....., 19.., to the stockholders of record at the close of business on ....., 19...

.....

Secretary.

No. 148.

DIVIDEND ORDER.

To the ..... Company, ... Illinois.

Until I revoke this order in writing please remit to me by mail to the address given below, by check drawn to the order of ..... the dividend now due, or which hereafter may be declared on shares of the capital stock of the ..... Company, now or hereafter standing in my name.

(Shareholder's Signature.)

Witness.

.....

.....

The signature should be exactly the same as it appears on the stock certificate.

Full name and post office address to which check is to be mailed.

.....

.....

No. 149.

POWER TO COLLECT DIVIDENDS.

Know all men by these presents, That ..... of ..... in the State of ..... do make, constitute and appoint ..... of ..... in the State of ..... to be ..... true and lawful attorney ....., for ..... and in ..... name ..... to receive the dividends which are now due, or which shall hereafter become due and payable according to

law on all the stock standing in ..... name ..... on the books of ..... with the power also to make and substitute an attorney or attorneys under ..... for that purpose; and to do all lawful acts requisite for effecting the premises; hereby ratifying and confirming all that ..... said attorney ..... or ..... substitutes shall lawfully do by virtue hereof.

In witness whereof, ... have hereunto set ..... hand ..... and seal ..... the ..... day of ..... 19...

.....(SEAL)

Signed, sealed and delivered in presence of

.....

No. 150.

RESOLUTION TO BORROW MONEY.

Resolved, That the President and Treasurer of this Company be, and they are hereby, authorized and directed to borrow for the use and benefit of this corporation, the sum of ..... Dollars, and to cause to be duly executed and delivered to the person or persons loaning the said sum of ..... Dollars, the bonds of this Company of the par value of ..... Dollars, payable ..... years after date, and redeemable at any time after ..... years from date at the pleasure of this Company, with interest at ..... per cent per annum, payable semi-annually, the money so borrowed to be applied as follows:

(Here state the specific objects of the loan.)

No. 151.

AGREEMENT FOR ENGAGEMENT OF A COMPANY MANAGER.

An agreement made the ..... day of ..... between the ..... Company, a corporation organized and existing under laws of the State of Illinois (hereinafter called the company), of the one part and ..... of ..... (hereinafter called the manager) of the other part,

Whereby it is agreed as follows:

1. The Company will employ the manager and the manager will act as the manager of the company for the term of ..... years from the ..... day of ..... next and thereafter until this agreement shall be determined by either party hereto giving to the other ..... (.....) months' notice in writing of such intended determination.

2. During the continuance of this agreement the manager shall devote the whole of his time during the business hours of the company to the business of the company and shall use his best endeavors to promote the interests and welfare of the company. He shall not either before or after the termination of this agreement disclose to any person whatsoever any information relating to the company or its customers or any trade secrets of which he shall become possessed while acting as manager.

3. The manager shall not without the permission of the directors directly or indirectly hold or deal in any shares of the company or of any other company carrying on a similar business.

4. The manager shall exercise and carry out all such powers and duties and shall observe all such directions and restrictions as the board of directors may from time to time confer or impose upon him but in default thereof the manager shall control the general management of the business of the company and shall have power to appoint and dismiss all the clerks and servants of the company (other than the secretary) and to enter into any trade contracts on behalf of the company in the ordinary way of business and to do all other acts and things which he may consider necessary or conducive to the interests of the company.

5. The manager shall be entitled by way of remuneration for his services to an annual salary of $..... to be paid quarterly on the usual quarter days and also to a commission of ..... per cent on the net profits of the company in each year. Such net profits shall be certified by the auditors of the company and their certificate shall be conclusive.

6. The manager shall be entitled to take (.....weeks) consecutive holidays in each year at a period to be approved of by the board and such other holidays not exceeding a total of (.....) days in any one year as the board may from time to time approve.

7. If the manager shall at any time be incapacitated by illness or otherwise from performing his duties as manager for three consecutive calendar months or if he shall in the opinion of the board be or become in any way unfit to act as manager the company may by three calendar months' notice in writing put an end to this agreement notwithstanding anything hereinbefore contained.

8. The manager shall not at any time within (five) years from the determination of this agreement either solely or jointly with or as agent for any other person, firm or company directly or indirectly carry on or be engaged, concerned or interested in carrying on within (name location) the trade or business of ..... or any other trade or business similar to any trade or business carried on during the period of his employment by the company (except with the consent in writing of the directors of the company for the time being).

In witnesss, etc.

(Signature and Seal of company and signature and seal of manager.)

No. 152.

NOTICE OF CALL.

....., 19...

To .....

You are hereby notified that by a resolution of the board of directors of the ..... Company, duly passed on the ..... day of ..... A. D. 19.., a call was made on all the shares of the capital stock of the ..... Company of ..... Dollars per share, payable on the ..... day of ..... next.

By Order of the Board of Directors.

.....

Secretary.

No. 153.

NOTICE OF ASSESSMENT OF STOCK.

Notice is hereby given that by resolution of the board of directors, duly authorized by the stockholders, an assesssment of .....

per cent, on the capital stock of the ..... Company, is now called for, payable to ..... treasurer, No. ..... Street, ..., on or before ....., 19...

Checks should be drawn to the order of the treasurer.

By order of the Board.

.....

Secretary.

No. 154.

AGREEMENT FOR PURCHASE OF PROPERTY AND PAYMENT THEREFOR IN STOCK.

Agreement executed at ....., this ..... day of ..... 19.., between ..... of ..... of the one part, hereinafter called the vendor, and the ..... Company, a corporation of the State of ....., of the other part, hereinafter called the vendee.

Whereas, The Vendor is the owner of the property hereinafter described in Article One, or has it within his power to convey or cause to be conveyed a good title to the same.

And Whereas, The vendee desires to purchase the said property from the vendor for the sum of ..... dollars, the board of directors of the vendee corporation having declared the said property to be of the fair value of ..... dollars, as shown in the enumeration thereof in Article One, and necessary for the purposes of its organization and business.

And whereas, The vendee desires to issue its capital stock in payment for the said property.

Now Know All Men, That the parties hereto have mutually covenanted and agreed as set forth in the following numbered articles:

Article One: The vendor hereby sells, assigns, transfers and sets over unto the vendee, its successors and assigns, the following property at the prices named, to-wit: (Here enumerate the property and valuation.)

It is understood and agreed, however, that the property is sold in bulk. and that the prices named after the separate items, as

above enumerated, are conditioned upon the vendee actually purchasing and paying for all the property so enumerated.

Article Two: The vendee hereby purchases from the vendor the property enumerated in Article One, and at the prices therein stated, and agrees to purchase and hereby does purchase all of the said property at and for the price or sum of ..... dollars.

Article Three: The vendee hereby issues unto the vendor and the vendor accepts from the vendee, capital stock of the vendee corporation at par value in the sum of ..... dollars, being ..... shares at the par value of ..... dollars each, in full payment and discharge of the purchase price of the said property before enumerated.

The vendee agrees to issue certificates for the said stock or any part thereof, to the said vendor, and to such person as the vendor may by writing designate, and in the absence of any designation on the part of the vendor to the contrary, certificates for the said stock shall be issued as follows:

NAME.	SHARES.
.....	.....
.....	.....
.....	.....

The said stock is hereby declared full paid and non-asssessable.

Article Four: This agreement shall have the full force and virtue of a bill of sale, and is intended to pass title from the vendor to the vendee upon delivery.

Article Five: The vendor agrees to make, execute and deliver any further writings which may be necessary or convenient to vest a perfect and unclouded title to the said property in the vendee, and to secure to the vendee the full benefit and enjoyment of the property hereby purchased.

Witness the hand and seal of the vendor, the hand of the president of the vendee corporation, the corporate seal thereof and the hand of the secretary in attestation, the day and year first above written.

.....
.....
.....
President.

Signed, sealed and delivered in the presence of:

.....

.....

Attest:

.....

Secretary.

No. 155.

FORM OF APPLICATION FOR SHARES.

To the Directors of ..... Company.

Gentlemen: Find inclosed herewith the sum of ..... dollars, being a deposit of ..... dollars per share on ..... shares in the above named company. I request you to allot me that number of shares upon the terms of the company's prospectus, dated the ..... day of ..... and I hereby agree to accept the same or any similar number that may be allotted to me.

Name in full .....

Address .....

Description .....

Date .....

Signature .....

No. 156.

APPLICATION FOR PREFERRED STOCK.

THE ..... COMPANY.

Capital Authorized, $.....

Capital Issued

..... Shares .....% Cumulative Preferred Stock, $.....

..... Shares Common Stock, $.....

Shares $..... each.

To Messrs. .....

.....

Gentlemen: I do hereby apply for and request you to procure the allotment to me of ..... Shares of $..... each in the .....% Cumulative Preferred Stock of The .....

Company, and I do hereby undertake to accept the same, or any less amount that may be allotted to me, and to pay therefor in cash upon allotment, or at the option of the Company, as calls shall be made in respect thereof; and I hereby appoint .....of your firm, my true and lawful attorney for me, and in my name and behalf to subscribe for the said ..... Shares of Preferred Stock, or any part thereof, in the books of the Company, and to do all lawful acts requisite for effecting the premises. My check for $....., being ..... per cent. on said shares, due on application, is inclosed.

Dated this ..... day of ..... 19...

Name .....

Address .....

No. 157.

NOTICE FOR PUBLICATION OF SPECIAL MEETING TO INCREASE CAPITAL STOCK.

Public notice is hereby given that a special meeting of the stockholders of ..... will be held at ..... on ....., the ..... day of ..... A. D. 19.., at the hour of ..... o'clock ... M., for the purpose of considering and voting upon the proposition to increase the capital stock of said ..... from ..... Dollars to ..... Dollars and for the transaction of such other business as may properly come before such meeting.

Dated ..... A. D. 19...

.....

.....

.....

A majority of the Directors of...

.....

No. 158.

APPLICATION FOR STOCK.

TO THE ..... COMPANY:

The undersigned, owning ..... shares of stock of The ..... Company, desires to avail himself of the privi-

lege of subscribing for his pro rata of the increase of the capital stock of the Company to be made and issued as proposed by the circular letter of the Company to stockholders dated ....., 19.., and does hereby subscribe for the proportion of such new stock to which he may be entitled, and agrees to make payment for said subscription at par pursuant to the terms and conditions to be specified in the offer to stockholders of such increased stock.

Dated, ..., 19...

(Name) .....

(Address) .....

No. 159.

STOCK ALLOTMENT RECEIPT.—CAPITAL STOCK.

The ..... Company.

..... Shares. ..... Building. No. .....

$..... ....., Ill., ..., 19...

This is to certify that The ..... Company has received ..... Dollars in full payment for ..... Shares of the Capital Stock of the Company subscribed for at $..... per Share under resolution of the Board of Directors, duly adopted ..... 19.., and that ..... or assigns is entitled to the certificates therefor. Stock Certificates dated ....., 19.., issued in the above name for this subscription will be ready for delivery on and after ...., 19.., and can be obtained only upon surrender of this receipt at the Stock Transfer Office of the Company, No. ..... Building .....

Should this receipt be asssigned, the form on the back hereof must be used for that purpose.

.....

President.

Countersigned:

.....

Treasurer.

Notice: Signatures to all powers of attorney and also all powers of substitution must be guaranteed by party presenting certificate of stock for transfer.

(Indorsement.)

For value received ..... hereby sell, assign and transfer unto ..... Shares of the Capital Stock represented by the within Certificate and ..... do hereby irrevocably constitute and appoint ..... Attorney to transfer the said Stock on the books of the within named Company with full power of substitution in the premises.

Dated, ..., 19...

..... (SEAL)

In presence of

.....

.....

Notice: The signature to this Assignment must correspond with the name as written upon the face of the Certificate in every particular without alteration or enlargement or any change whatever.

No. 160.

CERTIFICATE OF INCREASE OF CAPITAL STOCK.

It is hereby certified, That at a special meeting of the stockholders of .....

.....

held at the office of said corporation, in ....., County of ....., State of Illinois, on the ..... day of ....., A. D. 19.., pursuant to notice duly given, it was voted, two-thirds of all the votes represented by the whole stock of said corporation voting in favor thereof, to increase the capital stock of said corporation from the sum of .....

..... Dollars to the sum of ..... Dollars, and the capital stock of said corporation is hereby declared increased according to said vote.

Witness, The hand of the President of said corporation and its corporate seal this ..... day of ....., A. D. 19...

.....

President.

Attest:

.....

Secretary.

State of ....., ... County, ss.

.....

being duly sworn, on oath says that he is the President of .....
..... the above named corporation, and that the foregoing certificate of increase of capital stock of said corporation, by him subscribed, is true.

.....

President.

Subscribed and sworn to ..... this ..... day of ....., A. D. 19.., before me.

.....

No. 161.

NOTICE OF INCREASE OF CAPITAL STOCK.

Office of .....

..... 19..

Public notice is hereby given, that at a Special Meeting of the Stockholders of the ..... held at ..... on the ..... day of ..... 19.., at the hour of ..... o'clock ... M., the Capital Stock of said Corporation was increased from $..... to $....., and that certificates of such change have been filed in the office of the Secretary of State and in the office of the Recorder of Deeds in the County of ..... as provided by law.

.....

President.

.....

Secretary.

No. 162.

NOTICE OF CHANGE OF NAME.

State of Illinois, County of ....., ss.

Public notice is hereby given that at a Special Meeting of the Stockholders of ..... Company, held at the office of the Company, Nos. ..... Street, ..., ... County, Illinois, on the ..... day of ..... A. D. 19... at the hour of ..... o'clock ... M., stockholders

representing all of the capital stock of said corporation being present and voting in favor thereof, the following resolution was unanimously adopted.

Resolved, That the name of this Company be changed from ..... Company to ..... Company, and that the last mentioned name be and it is hereby adopted as the corporate name of this Company.

That certificates of such change have been filed in the office of the Secretary of State of Illinois and in the office of the Recorder of Deeds of ..... County, Illinois, as provided by law.

Dated, ..., Illinois, ... A. D. 19...

.....

President.

.....

Secretary.

No. 163.

NOTICE OF CHANGE OF OBJECTS.

State of Illinois, County of ....., ss.

Public notice is hereby given that at a Special Meeting of the stockholders of ..... Company, a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, held at the office of said Company, ... Avenue, at ....., ... County, Illinois, on ....., the ..... day of ..... 19.., at the hour of ..... o'clock ... M., the object for which said corporation was formed was changed so as to read as follows, to-wit: To manufacture, sell and deal in supplies pertaining to the automobile business; to buy and sell patents, issue licenses thereunder, and act as Commission Agents for owners of other articles, and as selling agents for owners of other patents, and do any and all things incident to the conduct of such business, stockholders representing all the shares of the capital stock of said corporation being present and voting in favor of said change, and a certificate of said change has been filed with the Secretary of State of the State of Illinois, and with the recorder of deeds of ..... County, Illinois, as required by law.

Dated, ..., Illinois, ..., 19...

.....
President.

.....
Secretary.

No. 164.

CERTIFICATE OF MEETING TO CHANGE NAME, INCREASE OR DECREASE CAPITAL STOCK, ETC.

State of Illinois, County of ....., ss.

I hereby certify, that at a special meeting of the stockholders of ..... held on ....., A. D. 19.., at ..... o'clock ... M., pursuant to notice required by law, which said notice was delivered personally (or deposited in the postoffice) at least ..... days before the time fixed for such meeting, properly addressed to each stockholder, signed by a majority of the Directors of said Corporation, stating the time, place, and object of such meeting, was also published, for three suc- the following resolution was adopted, at least two-thirds of all the votes represented by the whole stock of said Corporation voting therefor: .....
.....
.....
.....

.....
Secretary.

No. 165.

CERTIFICATE OF CHANGE OF OBJECTS OF CORPORATION.

Office of The .....Company,
....., Ill., ... 19...

To ....., Esq.,
Recorder of ..... County.

We hereby certify that at a special meeting of the stockholders of The ..... Company, held at the office of the Com-

pany in the City of ..... on the ..... day of ..... A. D. 19.., pursuant to notice in the following manner to-wit: by mailing to each of the stockholders of said corporation on the ..... day of ..... A. D. 19.., a written notice, properly addressed, stating the object of said meeting and the time and place when and where it would be held, and also by a general notice of the time, place and object of said meeting, published for ..... successive weeks in the ....., a newspaper published in ....., County of ..... and State of Illinois, the first publication of which notice was on the ..... day of ..... A. D. 19.., the following question was submitted to the stockholders for their action:

Resolved, That the objects for which this corporatoin was formed be enlarged and changed so that the same shall be as follows:

(Set forth new object clauses.)

which resolution was adopted by the stockholders, two-thirds of all the votes represented by the whole stock of such corporation being in favor of the adoption of said resolution and voting therefor.

We do hereby further certify that at the said special meeting of said stockholders held at the same time and place and in pursuance of the notice aforesaid, the following resolution was submitted to the stockholders for their action:

Resolved, That the capital stock of this corporation be increased from ..... dollars to the sum of ..... dollars, consisting of ..... shares of the par value of ..... dollars each; which said resolution was adopted by the stockholders, two-thirds of all the votes represented by the whole stock of said corporation being in favor of the adoption of said resolution and voting therefor.

Witness our hands and the seal of said corporation, this ..... day of ..... A. D. 19...

.....

(CORPORATE SEAL) *President.*

.....

Secretary.

State of Illinois, County of Cook, ss.

....., being duly sworn, on oath says that he is president of the ..... Company and that he has read the foregoing certificate, and knows the contents thereof, and that the facts therein stated and set forth are true.

Subscribed and sworn to before me, this ..... day of ..... A. D. 19...

.....

President.

.....

Notary Public.

No. 166.

CALL FOR SPECIAL MEETING OF STOCKHOLDERS.

We the undersigned, owning two-thirds of the stock of The ..... Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois, upon which said stock all assessments have been fully paid up, do hereby call a meeting of the stockholders of said ..... Company, to be held at the principal office of the Company, No. ..... Street, in the City of ....., County of ..... and State of Illinois, on the ..... day of ..... at ..... o'clock in the .....noon, for the purpose of submitting to the stockholders of the said Company the question of the sale of all the property of said corporation, the question of the surrender of the charter, franchises and corporate name, and the dissolution of said Company, in addition to the election of directors and the transaction of such other business as may properly come before the meeting, or any adjournment or adjournments thereof.

Dated ..... 19...

NAME OF STOCKHOLDER.	NO. OF SHARES HELD.
.....	.....

No. 167.

PROCEEDINGS FOR THE ABANDONMENT OF THE CORPORATE ENTERPRISE.

I, ..., President of the ..... Company, a corporation organized under the laws of the State of

Illinois, having its principal office in the City of ....., County of ..... and State of Illinois, do hereby certify that the following contains a complete record of all proceedings taken with respect to the abandonment of the corporate enterprise, the surrender of the charter, franchises, corporate name, and the dissolution of said corporation:

On the ..... day of ..... A. D. 19.., there was filed with the board of directors of said company a request in writing by more than two-thirds of the stockholders of said Company, hereto attached and marked Exhibit "A."

On the ..... day of ..... 19.., said date being at least ..... days before the time fixed for the meeting hereinbefore mentioned, pursuant to said request of the stockholders aforesaid, a notice properly addressed to each stockholder, signed by a majority of the directors of said Company stating the time, place and object of a special meeting of said stockholders, was deposited in the postoffice of ....., Illinois, as shown by the affidavit hereto attached and marked Exhibit "B."

On the ..... day of ..... 19.., and for ..... successive weeks thereafter, a general notice of the time, place and object of such meeting was also published in the ....., a newspaper published in said County of ....., State of Illinois, wherein the principal office of said corporation is located, a true and correct copy of said notice together with the certificate of the publisher as to the manner and time of its publication being attached hereto and marked Exhibit "C."

On the ..... day of ..... 19.., at the hour of ..... o'clock ... M., at a meeting of the stockholders of said Company specially called, in pursuance of the request and notices hereinbefore referred to, resolutions were adopted wherein the stockholders representing at least two-thirds of the whole capital stock of the said corporation, each stockholder voting in person and having had one vote for each share of stock held by him, agreed to dissolve said corporation, a true and correct copy of the minutes of said meeting being attached hereto and marked Exhibit "D."

Dated ..... 19...
(CORPORATE SEAL) .....
Attest: *President.*
.....
Secretary.

No. 168.

NOTICE OF SPECIAL MEETING TO DISSOLVE CORPORATION.

Exhibit "B."

..... Illinois, ... 19...

Notice is hereby given that a special meeting of the stockholders of the ..... Company will be held at the office of ....., ... Street, ..., Illinois, on the ..... day of ..... A. D. 19.., at the hour of ..... o'clock, ... M., for the purpose of submitting the question of the dissolution of said ..... Company to the vote of the stockholders.

The foregoing notice is given in pursuance of a request by more than two-thirds of all the stockholders of the ..... Company, a copy of which request is as follows:

To the Board of Directors of the ..... Company:

We, the undersigned, being all stockholders of the .... Company, desire to abandon the corporate enterprise, surrender our charter, franchise and corporate name, and dissolve the said corporation, and direct that you call a special meeting of the stockholders for the purpose of submittting the question of such dissolution to a vote of said stockholders in accordance with the statute in such cases made and provided.

.....
.....
.....

Being a majority of the Board of Directors of said Company.

State of Illinois, County of ....., ss.

..... being duly sworn, on his oath deposes and says that on the ..... day of ..... 19.., at the

hour of ..... o'clock ... M., he mailed a notice, of which the attached is a true copy, properly addressed to each stockholder of the ..... Company, as shown on the attached list of names and addresses of such stockholders, by depositing in the post-office at ....., Illinois, such notice, contained in a sealed envelope addressed as aforesaid, with postage prepaid.

.....

Sworn to and subscribed before me this ..... day of ..... A. D. 19...

.....

(N. S.) *Notary Public.*

No. 169.

SHORT WILL.

In the Name of God, Amen.

I, ..., widower, of the City of ....., in the County of ....., and State of Illinois, being of sound mind and memory, and considering the uncertainty of this frail and transitory life, do therefore make, ordain, publish and declare, this to be my last Will and Testament:

First, I order and direct that my executor hereinafter named pay all my just debts and funeral expenses as soon after my decease as conveniently may be.

Second, After the payment of such funeral expenses and debts, I give, devise and bequeath to my son ..... my house and lot known as Number ..... Street, ..., Illinois; to my daughter ..... I give, devise and bequeath my homestead known as Number ..... Street, ..., Illinois, with all the household goods and furniture therein contained. Whatever money may be on hand at the time of my decease after payment of all my just debts and funeral charges and the cost of administering of my estate shall be divided equally between my said son and daughter.

Lastly, I make, constitute and appoint my son, ..., to be executor of this, my last will and testament, hereby revoking all former wills by me made.

In Witness Whereof, I have hereunto subscribed my name and affixed my seal, the ..... day of ....., in the year of our Lord one thousand nine hundred and .....

..... (SEAL)

This instrument was on the day of the date thereof signed, published and declared by the said testator, ..., to be his last will and testament, in the presence of us who at his request have subscribed our names thereto as witness, in his presence, and in the presence of each other.

.....

.....

No. 170.

WILL, GIVING ALL TO WIFE, AND APPOINTING HER EXECUTRIX AND GUARDIAN.

In the Name of God, Amen.

I, ... of the Town of..... in the County of ....., and State of Illinois, being of sound mind and memory, and considering the uncertainty of this frail and transitory life, do therefore make, ordain, publish and declare this to be my last will and testament:

First, I order and direct that my executrix hereinafter named, pay all my just debts and funeral expenses as soon after my decease as conveniently may be.

Second, After the payment of such funeral expenses and debts, I give, devise, and bequeath, unto my beloved wife, ..., all the property, real and personal, and effects of every name and nature which I now have, may die possessed of, or may be entitled to, her heirs and assigns forever.

Third, I do by this my will, dispose of the custody and tuition of my children, who shall be minors at and after my decease, during their minority, to my dear wife, ..., and do hereby appoint her their guardian.

Fourth, I do hereby make, constitute and appoint my wife, ..., sole executrix of this, my last will and testament, and it is my wish, and I do hereby request that she may not be compelled to give any bond or security as such executrix, or as

guardian, and that she may settle the estate in her own way, and sell any or all of the real or personal estate, at public or private sale, as she may think best, and pay the debts without being compelled to account to the County, or any other Court; and I do hereby revoke all and every former will by me made.

In Witness Whereof, I have hereunto subscribed my name, and affixed my seal, the sixth day of May, in the year of our Lord one thousand nine hundred and .....

..... (SEAL)

This instrument was, on the day of the date thereof, signed, published and declared by the said testator, ..., to be his last will and testment, in the presence of us who at his request, have subscribed our names thereto as witnesses, in his presence, and in the presence of each other.

.....

.....

No. 171.

FORM OF CODICIL.

I, ..., of the Town of ....., in the County of ....., and State of Illinois, having made my last will and testament bearing date the ..... day of ....., in the year of our Lord one thousand nine hundred and ....., do now make this codicil, to be taken as a part of the same:

First, I hereby ratify and confirm said will in every respect, save so far as any part of it is inconsistent with this codicil.

Second, In case I die before my father, ..., I give, devise and bequeath to my said father, and to his heirs and assigns forever, unconditionally and without reserve, the cottage and lot owned by me at No. ..... Street, in the City of ....., Illinois, and now occupied by him as a residence, and in case he, my said father, should die first, then this codicil to be of no effect.

In Witness Whereof, I, ..., have to this codicil consisting of .....sheet .. of paper, subscribed my name and affixed my seal, the ..... day of

....., in the year of our Lord one thousand nine hundred and .....

.....

This instrument was, on the day of the date thereof, signed, published and declared by the said testator, ..., to be his last will and testament, in the presence of us who at his request, have subscribed our names thereto as witnesses, in his presence, and in the presence of each other.

.....

.....

No. 172.

CERTIFICATE OF DISSOLUTION.

State of Illinois, County of ....., ss.

I *hereby certify,* That at a ..... meeting of the *stockholders* of the ..... held on ..... A. D. 19..., at ..... o'clock .....M., pursuant to notice required by law, which said notice was delivered personally (or deposited in the postoffice) at least ..... days before the time fixed for such meeting, properly addressed to each Stockholder, signed by a majority of the ..... of said Corporation, stating the time, place and object of said meeting, and a general notice stating the time, place and object of such meeting was also published for ..... successive weeks in the ..... a newspaper printed in ..... County of ..... State of Illinois, the following resolution was adopted, at least two-thirds of all the votes represented by the whole stock of said Corporation voting therefor:

Resolved, That this Corporation be and the same is hereby dissolved.

It is hereby further certified, That the debts of said Corporation have been fully discharged and the assets distributed among the Stockholders according to their respective rights.

(SEAL) .....

.....

Secretary.

State of Illinois, County of ..... ss.

I, ... being duly sworn, declare on oath that I am President of the Corporation mentioned in the foregoing certificate, and that the statements therein made are true in substance and in fact.

In witness whereof, I have hereunto set my hand, and caused the seal of said Corporation to be affixed, this .....day of ..... A. D. 19...

.....

President.

Subscribed and sworn to before me, this ..... day of ..... A. D. 19...

.....

Notary Public.

No. 173.

AGREEMENT FOR SALE OF A GOING CONCERN.

An agreement made the ..... day of ..... between ....., of ..... on behalf of The ..... Company, (hereinafter called "the Company"), of the one part, and The ..... Corporation (hereinafter called "the corporation") of the other part.

Whereas the Company was incorporated in the year ..... under the laws of the State of ....., with a nominal capital of ..... divided into ..... shares of ..... each; *and whereas* the whole of the stock has been entirely issued and is fully paid up; *and whereas* by the charter of the Company, it is declared that one of the objects of the Company is to sell the undertaking of the Company or any part thereof, for such consideration as the Company may think fit, andin particular for shares, debentures, or securities of any Company having objects, altogether or in part, similar to those of this Company; *and whereas* the objects of the corporation are in part similar to those of the Company.

And whereas the corporation is desirous of acquiring the undertaking and property of the Company.

Now, therefore, it is agreed as follows:

1. The Company shall sell, and the corporation shall purchase, the undertaking of the Company, which expresssion shall be deemed to include all the lands, buildings, hereditaments, goods, chattels, moneys, credits, debts, bills, notes, goodwill, things in action, contracts, agreements, securities, and other assets whatsoever and wheresoever of the Company, except its uncalled capital.

2. As a part of the consideration for the said sale, the corporation shall undertake, pay, satisfy, discharge, perform, and fulfil all the debts, liabilities, contracts, engagements and obligations of the Company whatsoever, and shall indemnify the Company against all actions, proceedings, claims and demands in respect thereof.

3. As a further part of the consideration for the said sale, the corporation shall, if the Company within .....days from the date hereof, passes an effective resolution for the voluntary winding-up thereof, pay all the costs, charges and expenses of and incident to the winding-up and dissolution of the Company, and shall indemnify the Company against all actions, proceedings, claims and demands in respect thereof.

4. As further consideration for the said sale, the corporation shall pay to the Company the sum of $..... in cash, and shall allot to the Company, or its nominees, ... paid up shares in the capital of the corporation of $..... each.

5. The sale and purchase hereby agreed to be made shall be completed on the ..... day of ..... next, when the said consideration in cash and shares shall be paid and satisfied, and the Corporation shall execute and do all such assurance and things as shall reasonably be required by the Company for vesting in it the said premises.

6. This agreement is conditional on the same being ratified by a resolution of a general meeting of the Company, and if the same is not so ratified within ..... weeks from the date hereof, either of the parties hereto may, by notice in writing to the other, rescind this agreement.

In witness whereof, etc.

No. 174.

CERTIFICATE OF DEPOSIT.

$..... No. .....

Certificate of Deposit of First Mortgage Bonds of—
The ..... Company.

The ..... Trust Company of ..... hereby certifies that it has received one First Mortgage Bond of the ..... Company of ..... Dollars, due ..... 19..., Numbered ....., issued under ....., Mortgage dated ..... 19..., with Coupon due ..... 19..., and subsequent Coupons attached, which Bond was deposited and is held subject to the terms of a certain agreement dated ..... 19..., between ....., Committee, and such holders of the First Mortgage Bonds of the ..... Company as shall become parties to the said agreement; and the holder hereof has become a party to the said agreement by the acceptance of this Certificate. The holder hereof is entitled to receive all the securities, benefits and advantages coming to the depositor of the said Bond under said agreement. The interest represented herein is transferable by delivery of this Certificate subject to the terms and conditions of the said agreement. This Certificate may be registered as to ownership, but if registered no transfer, except on the books of the ..... Trust Company, shall be valid unless the last transfer be to bearer, when the Certificate will be transferable by delivery as before.

....., 19...

The ..... Trust Company,
By.....
President.

No. 175.

RECEIVER'S BOND.

Know all men by these presents, That we ...., as principal and .....

..... as surety, all of the County of ....., and State of Illinois, are held and firmly bound unto the People of the State of Illinois, in the sum of ..... Thousand Dollars, for the payment of which sum well and truly to be made, we and each of us bind ourselves, jointly and severally, and our respective heirs, executors and administrators, firmly by these presents.

The condition of the above obligation is such, that whereas by an order of the ..... Court of ..... County sitting in Chancery, made on the ..... day of ....., 19..., in a cause therein pending, wherein ..... is complainant, and ..... defendant, it was among other things ordered, that the above bounden ..... be appointed receiver of all the property, equitable interests, things in action, and effects of the defendant ..... except such as are by law exempt, and that he be vested with all the rights and powers of a receiver in Chancery upon his filing a bond for the faithful performance of his duties, in the penal sum of..... thousand dollars, and the approval thereof.

Now, therefore, If the said ..... shall duly account for what shall come to his hands or control as such receiver, and pay and apply the same from time to time as he may be directed by said Court, and obey such orders as said Court may make in relation to said trust, and in all respects faithfully discharge the duties of said trust, then the above obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed and dated the ..... day of ....., 19....

.....(SEAL)

.....(SEAL)

.....(SEAL)

Approved:

.....

.....

No. 176.

PROOF OF CLAIM IN BANKRUPTCY,

In the District Court of the United States,
.....*District of*.....

In the Matter of .....)
..... Bankrupt.) In Bankruptcy
.....) No. .....

Proof of claim.

..... District of ..... City and County of ..... ss.

At ....., in said ..... District of ....., on the ..... day of ..... A. D. 19..., Came.....of said .....State of ....., and made oath and says, that he is the Treasurer of The ..... Company (hereinafter for brevity termed "said claimant") a corporation organized and existing under the laws of the State of ....., and carrying on business in said ....., and that he is duly authorized to make this proof, and says:

That said ..... (hereinafter for brevity termed "said bankrupts") against whom a petition for adjudication of bankruptcy was filed on the ..... day of ....., and who were on the ..... day of ....., duly adjudged bankrupts, were at and before the filing of said petition and still are justly and truly indebted to said claimant in the sum of .....; that the consideration for said debts is as follows: .....

.....

That the total amount now due from the said bankrupts to said claimant is ..... Dollars; that said claimant has no judgment for said indebtedness so due on the part of said bankrupts, or any part thereof; that there are no set-offs or counterclaims to the same, and that the only securities held by said claimant for said debt are as follows: .....

.....

.....

Treasurer.

Sworn to and subscribed)
before me this .....day)
of ....., A. D.)
19....)

.....

Notary Public.

No. 177.

GENERAL LETTER OF ATTORNEY IN FACT.

In the District Court of the United States.

For the ..... District of .....

In the Matter of .....)
..... Bankrupt.) No. .....
In Bankruptcy.

To .....

.....

The ..... Company, a corporation organized and existing under and by virtue of the laws of the State of ..... and doing business in the state of ..... does hereby authorize you to attend the meeting or meetings of creditors of the bankrupt aforesaid at a Court of Bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said court in said matter, or at such other place and time as may be appointed by the Court for holding such meeting or meetings, or at which such meeting or meetings, or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion, for it and in its name to vote for or against any proposal or resolution that may be then submitted under the acts of Congress relating to Bankruptcy; and in the choice of Trustee or Trustees of the estate of the said Bankrupt, and for it to assent to such appointment of Trustee; and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due it under any

composition, and for any other purpose in its interest whatsoever, with full power of substitution.

In witness whereof, said The ..... Company has duly caused this instrument to be signed and sealed by its duly authorized officers and attested under its corporate seal this .... day of ..... A. D. 19...

The ..... Company,

By .....

(CORPORATE SEAL)

Signed, sealed and delivered in presence of

.....

.....

State of .....)
County of .....) ss

..... being duly sworn deposes and says, that he is the Treasurer of the said ..... a corporation, that he knows the corporate seal of the said .... corporation; that the seal affixed to the above instrument is such corporate seal; that he signed his name thereto as ..... of said corporation; that he executed the foregoing power of attorney on behalf of the said corporation, and is duly authorized so to do.

Sworn to and subscribed before me this .....day of ..... A. D. 19...

.....

Notary Public.

No. 178.

ASSIGNMENT OF ENTIRE INTEREST IN AN INVENTION BEFORE ISSUE OF LETTERS PATENT.

Whereas I, ..., of ....., county of ....., and state of ....., have invented a certain new and useful improvement in ....., for which I am about to make application for letters patent of the United States; and whereas the ....., a corpora-

tion in the state of Illinois, is desirous of acquiring an interest in said invention and in the letters patent to be obtained therefor:

Now, therefore, to all whom it may concern, be it known that, for and in consideration of the sum of ..... Dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said ....., have sold, assigned, and transferred, and by these presents do sell, assign, and transfer, unto the said ..... the full and exclusive right to the said invention, as fully set forth and described in the specification prepared and executed by me on the ..... day of ..... 19..., preparatory to obtaining letters patent of the United States therefor; and I do hereby authorize and request the Commissioner of Patents to issue the said letters patent to the said ..... as the assignee of my entire right, title, and interest in and to the same, for the sole use and behoof of the said ....., its successors and assigns.

In testimony whereof I have hereunto set my hand and affixed my seal this ..... day of ..... 19...

.....(SEAL)

In presence of

.....

(Add acknowledgment.)

No. 179.

ASSIGNMENT OF AN UNDIVIDED INTEREST IN LETTERS PATENT.

Whereas I, ... of ....., county of ....., state of ....., did obtain letters patent of the United States for an improvement in ....., which letters patent are numbered ....., and bear date the ..... day of ..... in the year .....; and whereas the .... a corporation of the State of Illinois, is desirous of acquiring an interest in the same;

Now, therefore, to all whom it may concern, be it known that, for and in consideration of the sum of ..... dollars to me in hand paid, the receipt of which is hereby acknowledged, transferred, and by these presents do sell, assign, and transfer until the said ..... the undivided one half part of the whole right, title and interest in and to the said invention and in and to the letters patent therefor aforesaid; the said undivided one half part to be held and enjoyed by the said ..... for its own use and behoof, and for the use and behoof of its successors and assigns, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In testimony whereof I have hereunto set my hand and affixed my seal at ....., in the county of..... and state of ....., this ..... day of ....., 19...

.....(SEAL)

In presence of

.....

(Add acknowledgment).

No. 180.

ASSIGNMENT OF TERRITORIAL INTEREST AFTER GRANT OF PATENT.

Whereas I, ..., of ....., county of ..... state of ..... did obtain letters patent of the United States for improvement in ....., which letters patent are numbered ....., and bear date the ..... date of ....., in the year 19...; and

Whereas I am now the sole owner of the said patent and of all rights under the same in the below-recited territory; and

Whereas ....., a corporation of the State of Illinois, is desirous of acquiring an interest in the same;

Now, therefore, to all whom it may concern, be it known that,

for and in consideration of the sum of ..... Dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said ..... have sold, assigned and transferred, and by these presents do sell, assign and transfer unto the said ....., all the right, title and interest in and to the said invention, as secured to me by letters patent, for, to, and in the state of ....., and for, to, or in no other place or places; the same to be held and enjoyed by the said..... ..... within and throughout the above-specified territory, but not elsewhere, for its own use and behoof, and for the use and behoof of its successors and assigns, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In testimony whereof I have hereunto set my hand and affixed my seal at ....., in the county of ....., and state of ....., this ..... day of ....., 19...

.....(SEAL)

In presence of

.....

(Add acknowledgment.)

No. 181.

LICENSE FOR SHOP-RIGHT.

In consideration of the sum of ..... dollars, to be paid by the ....., a corporation of the State of Illinois, I do hereby license and empower the said..... ..... to manufacture in said ..... (or other place agreed upon) the improvement in ....., for which letters patent of the United States No..... were granted to me the ..... day of....., in the year 19..., and to sell the machine so manufactured throughout the United States to the full end of the term for which said letters patent are granted

Signed at ....., in the county of .....

and state of ....., this ..... day of ..... 19...

.....(SEAL)

In presence of

.....

(Add acknowledgment.)

No. 182.

LICENSE WITH ROYALTY.

This agreement, made this ..... day of ..... 19..., between ....., of ....., in the county of ..... and state of ....., party of the first part, and the ....., a corporation of the State of Illinois, party of the second part, witnesseth, that

Whereas letters patent of the United States No. ....., for an improvement in ....., were granted to the party of the first part on the ..... day of ....., 19..: and,

Whereas the party of the second part is desirous of manufacturing ..... containing said patented improvements;

Now, therefore, the parties have agreed as follows:

I. The party of the first part hereby licenses and empowers the party of the second part to manufacture, subject to the conditions hereinafter named, at its factory in ..... and in no other place or places, to the end of the term for which said letters patent were granted, ... containing the patented improvements, and to sell the same within the United States.

II. The party of the second part agrees to make full and true returns to the party of the first part, under oath, upon the first days of ..... and ..... in each year, of all ..... containing the patented improvements manufactured by it.

III. The party of the second part agrees to pay to the party of the first part ..... dollars as a license fee upon every ..... manufactured by said party of the second part containing the patented improvements; provided, that if the said fee be paid upon the days provided herein for semi-annual returns, or within ..... days thereafter, a discount of ..... per cent shall be made from said fee for prompt payment.

IV. Upon a failure of the party of the second part to make returns or to make payment of license fees, as herein provided, for ..... days after the days herein named, the party of the first part may terminate this license by serving a written notice upon the party of the second part; but the party of the second part shall not thereby be discharged from liability to the party of the first part for any license fees due at the time of the service of said notice.

In witness whereof the party of the first part has hereunto set his hand and seal, and the party of the second part hath hereunto caused its common and corporate seal to be affixed, and the hand of its president to be hereunto set, at ....., this ..... day of ..... 19...

.....(SEAL)

In presence of

.....

(Add acknowledgment.)

No. 183.

STATEMENT OF A TRADE-MARK FOR A CORPORATION OR ASSOCIATION.

To all whom it may concern:

Be it known that ..... Manufacturing Company, (Name of applicant) a corporation duly organized under the laws of the State of ....., (State or country under the laws of which organized) and located in the City of ..... county of ....., in said State, (Location of corporation) and doing business at No. ..... Avenue,

in the city of ....., State of ....., (Business Address) has adopted and used the trade-mark shown in the accompanying drawing for arc and incandescent electric lamps and electric heaters (Particular description of goods) in Class No..... Electrical apparatus, machines and supplies. (Number and title of class—see classification.)

The trade-mark has been continously used in the business of said corporation (and in the business of its predecessors, ... Company,) (Name of predecessors, if any) since ....., 19... (Give earliest date of use.)

The trade-mark is applied or affixed to the goods, or to the packages containing the same, by placing thereon a printed label on which the trade-mark is shown. (Or state other mode or modes of application.)

....., (Name of applicant.)
By .....
(Signature of officer.)
(Official title.)

No. 184.

DECLARATION FOR A CORPORATION OR ASSOCIATION.

State of .....)
County of .....)

..... (Name of affiant.) being duly sworn, deposes and says that he is the ..... (Official.) of the *corporation,* the applicant named in the foregoing statement; the he believes the foregoing statement is true; that he believes said *corporation* is the owner of the trade-mark sought to be registered; that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use said trade-mark in the United States, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by said *corporation* in commerce among the several States of the United States (and between the United States and foreign nations or Indian tribes and particularly with *Italy and*

France); (Name of foreign nations or Indian tribes.) That the description and drawing presented truly represent the trade-mark sought to be registered; and that the *specimens* (or facsimiles) show the trade-mark as actually used upon the goods.

..... (Signature of Affiant.)
(Official Title.)

Subscribed and sworn to before me, a *notary public*, this ..... day of ..... 19... (Date of execution.)

(L. S.) .....
Notary Public, (Official Title.)

No. 185.

NOTICE OF OPPOSITION.

To the Commissioner of Patents:

In the matter of an application for the registration of a trade-mark for ..... (Particular goods.) Serial No. ..... filed ....., 19... (Number and date of application.) by ....., (Name of applicant.) of ....., Location or residence of applicant.) which was published on page ....., Vol. ....., No. ....., of the Official Gazette of ....., 19... (Page, volume, number and date of the Official Gazette.) I, ..., (Name of party opposing,) residing at No. ..... street, City of ....., State of Illinois, (Residence or location of party opposing,) believe I would be damaged by such registration of said trade-mark.

The grounds for opposition are as follows: (here state the grounds for opposing registration.)

.....,
(Signature of opposing party.)

State of Illinois,)
County of.....) ss.

On this ..... day of ..... 19... (Date of execution.) before me, a notary public, (Official title.) in and for ..... County, State of Illinois, personally appeared ..... (Name of party opposing) who,

being by me duly sworn, (Or affirmed) deposes and says that he has read the foregoing notice of opposition, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

(L. S.) .....

Notary Public, (Official Title.)

No. 186.

APPLICATION FOR CANCELLATION OF TRADE-MARK.

To the Commissioner of Patents:

In the matter of trade-mark No. ..... (Number of registration), registered ....., 19..., (Date of registration) by ..... (Name of registrant) of the city of ....., county of ....., State of ....., (Residence or location of registrant) I, ..., (Name of party applying for cancellation) deem myself injured by said registration and I hereby apply for the cancellation thereof.

The grounds for cancellation are as follows: (here state the grounds for cancellation.)

.....

(Signature of party applying for cancellation.)

State of ....., City of ....., ss.

On this ..... day of ....., 19.., (Date of execution) before me, a notary public, (Official title) in and for City of ....., State of ....., personally appeared ....., (Name of party applying for cancellation) who, being by me duly sworn, (or affirmed) deposes and says that he has read the foregoing application for cancellation, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

.....

Notary Public (Official title.)

No. 187.

WARRANTY DEED—STATUTORY FORM.

This Indenture Witnesseth, that the Grantor, ..., and ....., his wife, of the City of ....., in the County of ....., and State of Illinois, for and in consideration of the sum of ..... dollars, in hand paid, convey and warrant to ..... of the City of ....., County of ..... and State of Illinois, the following described real estate, to-wit: (Here insert description,) situated in the County of ....., in the State of Illinois, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this State.

Dated this ..... day of ....., A. D. 19...

.....(SEAL)

.....(SEAL)

State of Illinois, County of ....., ss.

I, ..., a Notary Public in and for said county, in the State aforesaid, do hereby certify that..... and ....., his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal, this ..... day of ....., A. D. 19...

.....

(SEAL)

Notary Public.

No. 188.

QUIT-CLAIM DEED—STATUTORY FORM.

The grantor, ... (a bachelor), of the City of ....., in the County of .....,

and State of Illinois, for and in consideration of ..... dollars, conveys and quit-claims to ....., of the City of ....., in the County of ....., and State of Illinois, all interest in the following described real estate: (here insert description) situated in the County of ...., in the State of Illinois, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this State.

Dated this ..... day of ....., A. D. 19...

.....(SEAL)

Signed, sealed and delivered in the presence of

.....

.....

State of Illinois, ... County, ss.

I, ..., a Notary Public in and for the said county, in the State aforesaid, do hereby certify that ..... a bachelor, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal, this ..... day of ....., A. D. 19...

.....

Notary Public.

(SEAL)

No. 189.

AFFIDAVIT TO BE FILED BEFORE TAKING DEPOSITION OF WITNESS.

State of Illinois, County of ....., ss.

In the ..... Court of ..... County.

.....,

vs.

.....,

..... being duly sworn according to law, deposes and says, that he is the plaintiff in the above entitled cause, that ....., who is a material witness for this affiant, in this cause, resides in the City of ....., in the County of ....., in this State (or "is about to depart from this State") or ("is in custody on legal process") or ("is unable to attend the said court on account of advanced age") or ("is unable to attend the said court on account of sickness,") etc., as the case may be; and that this affiant desires the deposition of the said ....., to be read in evidence on the trial of this cause.

Subscribed and sworn to before me this ..... day of ....., A. D. 19...

.....

Notary Public.

No. 190.

NOTICE OF TERMINATION OF TENANCY.

To. .....:

You are hereby notified, That your tenancy of the following premises, to wit: (here insert description) situate in the City of..... ....., in the County of ....., and State of Illinois, will terminate on the ..... day of ....., A. D. 19..., and you are now hereby required to surrender possession of said premises to me on that day.

Dated at ....., Illinois, this ..... day of ....., A. D. 19...

.....

By .....

Agent.

State of Illinois, ... County, ss.

....., being duly sworn, deposes and says, that on the ..... day of ....., 19..., he served the within notice by delivering a copy thereof to the within named, ...

.....

Subscribed and sworn to before me, this ..... day of ....., 19...

.....

Justice of the Peace.

No. 191.

FARM LEASE—MONEY RENT.

This Indenture, Made the ..... day of ..... in the year of our Lord one thousand nine hundred and ..... between ....., of the Town of ....., in the County of ....., and State of Illinois, party of the first part, and ....., of the same place, party of the second part,

Witnesseth, That the said party of the first part has let, and by these presents does grant, demise, and to farm-let unto the said party of the second part the following described premises: (here insert description of land) situate in the County of ..... and State of Illinois.

With the appurtenances, for the term of ..... years from the ..... day of ....., one thousand nine hundred and ....., at the yearly rent or sum of ....., to be paid yearly, in advance.

And it is Agreed, That if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said party of the first part to re-enter the said premises, and to remove all persons thereupon.

And That at the expiration of the said term, the said party of the second party will quit and surrender the premises hereby demised, in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted.

And The said party of the first part, does covenant that the said party of the second part, on paying the said yearly rent, and performing the covenants aforesaid, shall and may peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid.

.....(SEAL)

.....(SEAL)

No. 192.

MECHANIC'S LIEN—NOTICE FOR MATERIALS.

To .....:

You are hereby notified, that I have been employed by..... ..... to furnish material (1) to-wit: marble for vestibule and halls upon your building described as follows: (2) (here describe and where situated), and that I shall hold the building, and your interest in the grounds, liable for the amount that (3) is due me on account thereof.

Dated this ..... day of ....., A. D. 19...

.....

(1) Here state the kind of material and the nature of the demand.

(2) Here state the building and where situated in general terms.

(3) If the claim is due insert the word "is;" if not due the words "may become."

No. 193.

NOTICE TO OWNER FOR MATERIAL AND LABOR DUE.

To .....:

You are hereby notified, that I have been employed by .... to furnish material and labor for plastering your building under his contract with you on your property, described as follows: (here describe premises) and that there was due me on the ..... day of ....., 19..., therefor the sum of ..... dollars, and that I shall hold the building and your interest in the grounds, liable for the amount that is due me on account thereof.

Dated this ..... day of ..... A. D. 19...

.....

No. 194.

NOTICE FOR MATERIAL AND LABOR TO BECOME DUE.

To .....:

You are hereby notified, that I have been employed by .....

..... to furnish material and labor in making concrete sidewalks under his contract with you on your property as follows: (here state building and where situated) and that there will become due me on the ..... day of ....., 19..., therefor the sum of ..... dollars, and that I shall hold the buildings and your interest in the grounds, liable for the amount that will become due me on account thereof.

Dated this ..... day of ....., A. D. 19...

.....

Note: Make in duplicate, preserve copy and note date of service thereon.

No. 195.

NOTICE OF PROTEST OF NOTE.

State of Illinois, County of ....., ss.

....., Ill., ..., 19...

Sir:

A note for $..... dated ....., 19.., payable ....., 19.., signed by ..... indorsed by ....., being this day due and unpaid, and by me protested for nonpayment, I hereby notify you that the payment thereof has been duly demanded, and that the holders look to you for payment, damages, interest and costs.

Done at the request of .....

.....

Notary Public.

To .....

No. 196.

CERTIFICATE OF PROTEST.

$..... ....., Ill., ..., 19...

..... days after date, for value received, I promise to pay to the order of ....., the sum of ..... dollars, at his office in ....., Ill., with interest at the rate of ..... per cent, per annum, after date until paid.

No. ....

State of Illinois, ...County, ss.

Be it Known, That on this ..... day of ....., in the year of our Lord one thousand nine hundred and ..... I, ..., a notary public, duly commissioned and sworn, and residing in the City of ....., in said county and State, at the request of ..... went with the original note, which is above attached, to the office of ..... and .... and demanded payment thereon, which was refused.

Whereupon, I, the said notary, at the request of the aforesaid, did protest, and, by these presents, do solemnly protest, as well against the maker of said note and the endorsers thereof, as all others whom it may or doth concern, for exchange, re-exchange, and all costs, charges, damages, and interest already incurred by reason of the non-payment of the said note.

And I, the said notary, do hereby certify, that, on the same day and year above written, and within ..... hours from the time of such protest, due notice of the foregoing protest was put in the postoffice at ..... as follows:

Notice for ....., mailed to No. ..... Street, ..., Ill.

Notice for ....., mailed to No. ..... Street, ..., Ill.

Each of the above-named places being the reputed place of residence of the person to whom this notice was directed.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, the day and year first above written.

.....

(SEAL) *Notary Public.*

Fees.—Noting for protest, 25 cents; protest, 75 cents; noting protest, 25 cents; notices, ...; certificate and seal, 25 cents; postage, ...; Vol. .....; page .....; $.....

No. 197.

NOTARY'S CERTIFICATE OF ACKNOWLEDGMENT.

State of Illinois, County of ....., ss.

I, ..., a notary public in and for the said county, in the State aforesaid, do hereby certify, that ..... and ....., his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal, this ..... day of ....., A. D. 19...

.....

(SEAL) *Notary Public.*

No. 198.

JUDGMENT NOTE—SHORT TERM.

$..... ..... Ill., ..., 19...

..... months after date for value received we promise to pay to the order of ..... & Co., ... dollars at their office No. ..... Street, ..., Ill., with interest at ..... per cent. per annum after date until paid. And to secure the payment of said amount we hereby authorize, irrevocably, any attorney of any court of record to appear for us in such court, in term time or vacation, at any time hereafter, and confess a judgment without process, in favor of the holder of this note, for such amount as may appear to be unpaid thereon, together with costs and ..... dollars attorney's fees, and to waive and release all errors which may intervene in any such proceedings, and consent to immediate execution upon such judgment, hereby ratifying and confirming all that our said attorney may do by virtue hereof.

No. .....

.....

.....

No. 199.

CHATTEL MORTGAGE NOTE.

$..... ....., Ill., ..., 19...

..... years after date, for value received, we promise to pay to the order of ..... the sum of ..... dollars, at his office at ....., Illinois, with interest thereon at the rate of ..... per cent. per annum, payable annually.

This note is secured by a chattel mortgage to ..... of even date herewith, on personal property in the City of ....., Illinois, and is to bear interest at the rate of ... . per cent. per annum after date until paid.

No. .....

.....

.....

No. 200.

GENERAL RELEASE.

Know all Men by these Presents, That I, ..., of the City of ....., in the County of ....., and State of Illinois, for and in consideration of the sum of ..... dollars, lawful money of the United States of America, to me in hand paid by ....., of the City of ....., in the County of ....., and State of Illinois, ... have remised, released and forever discharged, and, by these presents, do, for myself and my heirs, executors and administrators, remise, release, and forever discharge the said ....., his heirs, executors, and administrators from all liability by reason of having sustained bodily injuries in his factory by explosion while in his employ, and from all manner of actions, cause, and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims, and demands, whatsoever, in law or in equity, which now have against him or ever had, or which my heirs, executors, or administrators, hereafter can, shall, or may have, for, upon or by reason of

any matter, cause, or thing, whatsoever, from the beginning of the world, to the day of the date of these presents.

In Witness Whereof, I have hereunto set my hand and seal, the ..... day of ....., in the year of our Lord one thousand nine hundred and .....

..... (SEAL)

Sealed and delivered in the presence of.

.....

INDEX

Abandonment of corporate enterprise, proceedings, for, 394.
Abstract of title, 295.
Acceptance of bills, 218-20.
by separate instrument, 218.
kinds of, 219.
presentment for, 220.
Acceptance for honor, 224.
Acceptance supra protest, 224.
Acceptance, what constitutes, 99.
Accommodation paper, 205.
Accommodation party, liability of, 200.
Action for price of goods, 104.
for damages for non-acceptance, 104.
for failing to deliver goods, 104.
for converting or detaining goods, 104.
Active partner, 140.
Acts of bankruptcy, 241.
Acts penalized by statute, 63.
Acts prohibited by statute, 63.
Adverse possession, 296.
Advertisement of bonds, 358.
Affidavit of claim, 313.
for change of venue, 313.
of title, 348.
for attachment, 353-355.
before taking deposition of witness, 417.
AGENCY, 107-125.
definitions of, 107.
principal and agent, 107.
in general, 107.
who may be agents, 109.
general and special, 108.
appointment and authority, 110.
scope of agent's authority, 110.
execution of authority, 112.
appointment and ratification, 112.
subagency, 113.
implied powers of agent, 114.
duties and rights of agent, 114.
liability of an agent, 115.
rights of third parties, 116.
factors and brokers, 117.
foreign and domestic factors, 121.
brokers' commissions, 122.
dissolution of agency, 122.
bankruptcy of either party, 124.
Agent, general, 108.
special, 108.
scope of authority of, 110.
duties and rights of, 114.
Agents' liability, 17.
Agreement for engagement of company manager, 381.
for purchase of property by corporation, 384.
for sale of going concern, 401.
to sell stock, 337.
with broker, 357.
escrow, 373.
Agreement of parties, 40.
by mail, 43.
Alien friends, 50.
Alien enemies, 50.
Aliens, 50.
Allotment receipt, stock, 388.
Allowance of claims in bankruptcy, 243.
Alteration of negotiable instrument, 216.
Ambiguity in negotiable paper, 197.
Amendments of articles of incorporation, 160.
AMENDMENTS to the Constitution of The United States, 288-293.
Annual meeting, notice of, 374.
Application for cancellation of trademark, 415.
Application for shares, 386.
for preferred stock, 386.
for stock, 387.

Applications for copyrights, 257.
for patent, 248.
Appointment of agents, 110.
Articles of incorporation, 154, 317-332.
specific object clauses, 317-330.
general object clauses, 330-332.
Ascertained goods, when property in passes, 93.
Assessment of stock, notice of, 383.
Assets, distribution of, 148, 149.
Assignability of patent, 251.
Assignment of contracts, 69.
of liabilities, 70.
of rights, 70.
of claims, 71.
Assignment of entire interest in invention, before issue of patent, 407.
of undivided interest in patent, 408.
of territorial interest in patent, 409.
Assignment (indorsed) of shares of corporate stock, 336.
of stock, 336.
of account, 351.
of judgment, 352.
by a corporation, 369.
of account by corporation, 370.
Assumed name, liability of person signing in, 198.
Attachment bond, 355.
writ, 356.
Attorney in fact, general letter of, 406.
Authority of agent, 108, 109, 110.
of broker, 118.
BAILMENTS, 127-138.
definitions of, 127.
bailor and bailee, 127.
test of bailment, 127.
kinds of bailments, 128.
rights of bailors and bailees, 129.
nature of the bailment, 129.
gratuitous bailments, 129.
bailments for hire, 131.
degrees of care, 132.
pledge or pawn, 133.
postmasters as bailees, 135.
innkeepers, 136.
common carriers, 137.
telegraph companies, etc., 138.
Bailor and bailee, 127.
BANKRUPTCY, 239-246.
origin of insolvency laws, 239.
state insolvency laws, 240.
U. S. Bankruptcy law, 241.
acts of bankruptcy, 241.
who may become bankrupts, 242.
proof and allowance of claims, 243.
declaration and payment of dividends, 245.
discharge of the bankrupt, 246.
Bankruptcy and agency, 124.
Bankruptcy laws 239.
Bankrupts, who may become, 242.
Bearer, when paper is payable to, 195.
Bill of lading, 297.
Bill of sale, 340.
by a corporation, 371.
Bond of treasurer of society, 332.
Bills of exchange, 217.
Bills in a set, 227.
Blank indorsement, 200.
Blanks in negotiable paper, 196.
Bond of treasurer of society, 332.
to a corporation, 368.
of agent of corporation, 368.
receivers', 403.
Bonds, advertisement of, 358.
notice of redemption of, 359.
Books of corporation, 172.
Breach of contract of sale, 104.
of warranty, 105.

Brokers, 117-122.
Brokers' commissions, 122.
Buyer or vendee, 81.
By-laws of corporation, 172.
Call for special meeting of stockholders, 394.
Call, notice of, 383.
Cancellation of negotiable instrument, 216.
Cancellation of trademark, application for 415.
Capacity to buy or sell, 84.
Capital stock, notice of meeting to increase, 387.
certificate of increase of, 389.
Care, degrees of, 132.
Carriers, common, 233.
of goods, 233.
of passengers, 237.
Carriers' liability and limitations, 236.
Caveats abolished, 253.
Certificate of protest, 421.
of acknowledgment, notary's, 423.
Certificate of meeting to change name, etc., 392.
of change of objects, 392.
of dissolution, 400.
of increase of capital stock, 389.
of deposit, 403.
as to by-laws of corporation, 317.
of stock, full paid, 334.
of stock, partially paid, 335.
Change of name, notice of, 390.
of objects, notice of, 391.
certificate of, 392.
Change of ownership, 127.
Charter party, 298.
Chattel mortgage, 341, 344, 348.
of corporation to individual, 359.
Chattel mortgage note, 424.
Checks, 191, 228.
Civil law, 25.
Claims in bankruptcy, 243.
Codicil, form of, 399.
Collateral note, 339.
Collateral security transactions, 133.
Commercial combinations, 180-184.
Commercial law, 25.
Commercial paper, 191.
Commission merchants, 117.
Commissions, brokers', 121, 122.
Commissioners on Uniform State Laws, 83.
Common Carriers, 137, 233-238.
definitions, etc., 233.
kinds of, 233.
of goods, 233.
duties of, 234.
duties of senders, 234.
remuneration of carriers, 235.
duty to deliver, 235.
provision of facilities, 236.
liability and limitations, 236.
carriers of passengers, 237.
Common law, 25.
Conditional indorsement, 201.
Conditional sales, 89.
Conflict of laws, 36.
Consent, must be real, 43.
Consideration, 56-61.
good and valuable, 59.
sufficiency of, 58.
need of a, 60.
Consideration in negotiable instruments, 199.
Constitution of the United States, 271-293.
Constitutions, 34.
Construction of contracts, 67.
general rule of, 69.
Construction of negotiable instruments, 197.
Contract of sale, 81.
to sell, 81.
Contract, short general, form of, 316.
employee's, 373.

CONTRACTS, law of, 37-79.
definitions of, 38.
essentials of, 39.
classification of, 39.
executed and executory, 39.
formal and informal, 39.
express and implied, 40.
agreement in a, 40.
distinct intention in, 41.
communication of invention, 42.
offer and acceptance, 43.
consent must be real, 43.
fraud and misrepresentation, 44.
duress and undue influence, 45.
statute of frauds, 45-49.
parties to a, 49.
consideration of, 56-61.
offers made on time, 61.
legality of object, 63.
67.
interpretation or construction,
assignment of, 69.
negotiable, 71.
discharge of, 72.
remedies for breach of, 76.
how to make a, 77.
Copartners, 139.
COPYRIGHT, 247-264.
registration of, 253.
fees for, 254.
notice, 255, 256.
no entry of mere names, 256.
application forms, 257.
affidavit forms, 259.
renewal or extension, 259.
rules of practice and procedure, 260-264.
hints to expedite, 264.
Corporate enterprise, proceedings for abandonment of, 394.
Corporate records, 172.
CORPORATIONS, 54, 151-184.
as parties to a contract, 54.
definitions, etc., 151.
diversity of state laws, 151.
the Uniform Business Corporation Act, 152.
who may be incorporators, 153.
articles of incorporation, 154.
subscriptions to stock, 159.
commencement of business, 161.
powers of, in general, 162.
issue of stock, 164.
transfer of stock, 166.
stockholders' meetings, 168.
liability of stockholders, 169.
directors of, 171.
officers of, 171.
by-laws, 172.
corporate records, 172.
semi-annual reports, 173.
foreign corporations, 174.
legislative investigation of, 175.
dissolution of, 176.
effect of dissolution, 178.
trusts, 180-184.
Corporations and partnership, 140.
Coupon, form of, 338.
Creditors' rights against sold goods, 96.
Cumulative voting, 169, 179.
Damages for non-acceptance of goods, 104.
Date of negotiable instrument. presumption as to, 196.
Death and agency, 125.
Declaration of dividends in bankruptcy, 245.
DECLARATION OF INDEPENDENCE, 265-270.
Declaration of trademark for a corporation or association, 413.
Deed, warranty, 416.
quit-claim, 416.
Degrees of care, 132.
Del credere agents, 118.
Delivery, 82, 229.
of negotiable paper, 197.

of wrong quantity, 98.
Demand, when paper is payable on, 195.
Demurrage, 299.
Deposit, bailment by, 128.
Deposit, certificate of, 403.
Deposition of witness, affidavit before taking, 417.
Destruction of goods sold, 87.
of goods contracted to be sold, 87.
Determinable future time, 194.
Dictionary of Law Terms in Common Use, 295-310.
Directors, 171.
liability of, 172.
Discharge of bankrupt, 246.
Discharge of contracts, 72.
by agreement, 72.
by performance, 73.
by breach, 75.
by impossibility of performance, 75.
by operation of law, 76.
Discharge of negotiable instruments, 214-216.
Discretionary power of agent, 111.
Dishonor of negotiable paper, 209.
notice of, 210.
Dissolution of agency, 122.
by limitation, 122.
by direct act of the parties, 123.
by change in condition of parties, 124.
Dissolution of corporations, 176, 177.
effect of, 178.
certificate of, 400.
Dissolution of partnership, 147-149.
effect of, 148.
notice of, 148.
Distribution of assets, 148, 149.
Diversity of corporation laws, 151.
Dividend resolution, form of, 379.
notice, 380.
order, 380.
Dividends in bankruptcy, 245.
Dividends, power to collect, 380.
Domestic and foreign factors, 121.
Domestic corporations, 179.
Dormant partners, 141.
Draft of Uniform Business Corporation Law, 152.
Drawings of patent, 249.
Drunkards, right to contract, 53.
Duress, 45.
Duties and rights of agents, 114.
Duties of common carriers, 234.
of senders, 234.
Duties of partners, 144.
Duty of carriers to deliver, 235.
to provide facilities, 236.
Effect of Statute of Frauds, 84.
Election of directors, notice of, 375.
Eminent domain, 300.
Employee's contract, 373.
Equity, law and, 32.
Escrow, 300.
Escrow agreement, 372.
Essentials of contract of sale, 82.
Examples of sales, 82.
Exchange, bills of, 217-228.
Executed contracts, 39.
Execution of agents' authority, 112.
Executory contracts, 39.
Executrix, will appointing wife, 398.
Exemptions of property, 106.
Express and implied authority, 110.
Express and implied contracts, 40.
Express warranty, 90.
Extension interest note, 358.
Extension of copyright, 259.
Factors and brokers, 117-122.
Farm lease, money rent, 419.
Federal and state laws, 34.

Fees for copyright, 254.
for patents, 251, 252.
Fee simple, 301.
Fee tail, 301.
Felo de se, 301.
Filing and recording fees for articles of incorporation, 159-160.
Firm, the, 139.
Firm name, the, 142.
Fixtures, removal of, 189.
Foreclosure, 301.
Foreign and domestic factors, 121.
Foreign bill of exchange, 217.
Foreign corporations, 174, 175.
Forfeiture of stock, 166.
Forged signature, effect of, 199.
Formal and informal contracts, 39.
Forma pauperis, 302.
Form of contract of sale, 84.
Form of negotiable instrument, 193.
Forms, legal, used in business, 313-424.
Fraud in a contract, 44.
Future goods, 82.
General agents, 108.
General average, 302.
General indorser, liability of, 205.
General letter of attorney in fact, 406.
General release, form of, 424.
Good consideration, 59.
Goods, 82.
sold on trial, 89.
Goodwill, 142, 143.
Gratuitous bailments, 129, 130.
Guardian, will appointing wife, 398.
Habeas corpus, 302.
Hints to expedite copyright, 264.
Hire, bailments for, 131.
Hired services about the property, 132.
Hired use of property, 132.
Holder defined, 229.
Holder in due course, what constitutes a, 203.
rights of, 203.
How to make a contract, 77.
Illegal contracts, 63.
Illegality, effect of in contracts, 66.
Illegality of sale, effect of, 103.
Implied authority of agent, 110, 114.
Implied contracts, 40.
Implied warranties of title, 90.
warranty in sale by description, 91.
warranties of quality, 91.
warranties in sale by sample, 92.
Incompetency in agency, 124.
Incompetent parties, 50.
Incorporation, articles of, 154.
Incorporators' meetings, 167.
Incorporators, who may be, 153.
Increase of capital stock, 387, 389, 390.
certificate of, 389.
notice of, 390.
Indemnity bond for lost note or bill, 340.
Indenture, 302.
Indorsee, rights of, 201.
INDORSEMENT, 200-202.
how made, 200.
kinds of, 200.
when restrictive, 201.
effect of restricting, 201.
qualified or conditional, 201.
where payable to two or more persons, 202.
where name is misspelled, 202.
in representative capacity, 203.
Indorsement by infant or corporation, 199.

in blank, 200.
of negotiable instruments, 200.
Indorser, when person deemed an, 205.
Infants, 51, 52.
as partners, 140.
Inland bills of exchange, 217.
Innkeepers—relation to guests, etc., 136, 137.
Insane persons, 52.
Insolvency laws, origin of, 239.
of states, 240.
Instruments, negotiable, 191-231.
Insurable interest, 303.
Intent, 67.
when evidence is admitted, 68.
Interpretation of contracts, 67.
of corporation law, 178.
Investigation of corporations, 175.
Involuntary dissolution of corporations, 177.
Issuance of patent, 251.
Issue of negotiable instrument, 230.
Joint and several, 303.
Judgment note—short term, 423.
LANDLORD AND TENANT, 185-190.
definitions, etc., 185.
leases, 185.
lessor and lessee, 185.
form of lease, 186.
lessor's rights, 187.
lessee's rights, 188.
repairs, 188.
fixtures, 189.
termination of lease, 190.
LAW, definition of, 23.
related terms, 24.
various kinds of, 25.
a rule of action, 26.
a necessity, 28.
written and unwritten, 29.
why men obey, 30.
and equity, 32, 33.
Law merchant, 25.
Laws, conflict of, 36.
Law terms in common use, 295-310.
Lease of farm, money rent, 419.
Leases, 185.
termination of, 190.
LEGAL FORMS, 313-424.
Legality of object in a contract, 63.
Legality of sale, 103.
Legislative investigation of corporations, 175.
Lessee's rights, 188.
Lessor and lessee, 185.
Lessor's rights, 187.
Letter of attorney in fact, general, 406.
LEX NON SCRIPTA, 29.
LEX SCRIPTA, 29.
Liabilities of maker, drawer, and acceptor of negotiable instruments, 204.
of partners, 146.
Liability of an agent, 115.
of a principal, 116.
of carriers, 236.
of general indorser, 205.
of person signing in assumed name, 198.
of stockholders, 169, 170.
limitation of, 170.
of directors, 172.
License for shop-right, 410.
with royalty, 411.
Lien, mechanic's, notice for, 420.
Lien, unpaid seller's, 100.
when lien is lost, 100.
Limitation of agency, 122.
Limited partnerships, 149.
Liquidated damages, 304.
Loan for use, bailment by, 128.
Lost note or bill, indemnity bond for, 340.

Manager, agreement for engagement of, 381.
Mandate, bailment by, 128.
Manner of delivery of goods sold, 97.
Marine law, 25.
Maritime law, 25.
Marriage and agency, 125.
Married women, 53, 140.
as partners, 140.
Maturity of negotiable paper, 209.
Mechanic's lien, notices for materials, etc., 420.
Meeting to change name, certificate of, 392.
to increase or decrease stock, certificate of, 392.
of stockholders, special, call for, 394.
to dissolve corporation, notice of, 396.
Meetings of incorporators, 167.
of stockholders, 168.
Misrepresentation, 43.
Model of patent, 249.
Money, resolution to borrow, 381.
Moral law, 26.
Morality, law and, 33.
Mortgage—statutory form, 314.
chattel, 341, 344, 348, 359, 361.
Municipal law, 26, 27.
Blackstone's definition of, 27.
Cicero's definition of, 27.
Names cannot be copyrighted, 256.
Nature of bailment, 129.
Negotiable contracts, 71.
Negotiable document of title, 97.
NEGOTIABLE INSTRUMENTS, 191-231.
definitions, etc., 191.
a substitute for money, 192.
form of, 193.
omissions in, 194.
when payable on demand, 195.
when payable to order, 195.
when payable to bearer, 195.
filling of blanks in, 196.
delivery of, 197.
construction when ambiguous, 198.
effect of forged signature, 199.
consideration in, 199.
negotiation of, 200.
indorsement of, 200.
rights of holder, 203.
liabilities of parties, 204.
presentment for payment, 206.
notice of dishonor, 210.
discharge of, 214.
bills of exchange, 217.
protest, 223.
acceptance for honor, 224.
payment for honor, 226.
bills in a set, 227.
promissory notes and checks, 228.
Uniform Negotiable Instruments Act, 230.
Negotiable paper, 191-231.
Negotiation of instruments, 200.
Nominal partners, 141.
Non-acceptance of goods, 104.
Non-acceptance, when bills are dishonored by, 222.
Non-payment of negotiable instrument, 209.
Notary's certificate of acknowledgment, 423.
Note, judgment, 423.
chattel mortgage, 424.
Notes, promissory, 228, 229.
NOTICE of dishonor of negotiable paper, 210.
waiver of, 213.
of copyright, 255.
of meeting to organize, 315.
of annual meeting, 374.
of election of directors, 375.
of special meeting, 375.

of payment of interest coupons, 338.
of payment of short term notes, 338.
of maturity of short term notes, 339.
of redemption of bonds, 359.
of dividend, 380.
of call, 383.
of assessment of stock, 383.
of special meeting to increase capital stock, 387.
of increase of stock, 390.
of change of name, 390.
of change of objects, 391.
of special meeting to dissolve corporation, 396.
of opposition to trademark, 414.
of termination of tenancy, 418.
of mechanic's lien, 420.
of protest of note, 421.
Oath by applicant for patent, 249.
Offer and acceptance, 43.
Officers of corporation, 171.
Omissions in negotiable paper, 194.
Order, when paper is payable to, 195.
Organization meeting (corporations), 167.
Organization tax for corporations, 160.
Ostensible partner, 141.
Paper, negotiable, 191-231.
Particular agents, 108.
Particular powers of partners, 145.
Parties to a contract, 49.
Parties—active, ostensible, nominal, secret, silent and dormant, 140.
PARTNERSHIP, 139-149.
definitions, etc., 139.
essentials of, 139.
the firm, 139.
who may become partners, 140.
various kinds of partners, 140.
articles of, 141.
property, 142.
firm name and goodwill, 142, 143.
real estate, 143.
powers of partners, 144.
sale of partner's interest, 145.
particular powers, 145.
liabilities of partners, 146.
dissolution of partnership, 147.
notice of dissolution, 148.
effect of dissolution, 148.
distribution of assets, 149.
limited partnerships, 149.
Partner's power to bind firm, 144, 145.
Patent, assignment of entire interest in, 407.
assignment of undivided interest in, 408.
assignment of territorial interest in, 409.
Patent office procedure, 248.
PATENTS, 247-253.
patent office procedure, 248.
applications for, 248.
drawings and models, 249.
oath by applicant, 249.
issuance of patent, 251.
assignability of patent, 251.
reissues, 251.
fees, 251.
law and rules of practice, 252.
caveats abolished, 253.
PATENTS AND COPYRIGHTS, 247-264.
definition, etc., 247.
Payment for honor, 226.
Payment of dividends in bankruptcy, 245.
Performance of contract, to sell, 97.
Personal property, 30.
Place of delivery of goods sold, 97.

Place of the contract, 69.
Pledge or pawn, bailment by, 128, 133.
Pledgor and pledgee, 133.
Posse comitatus, 305.
Postmasters' responsibility, 135.
Power of attorney, general, 377.
to transfer stock, 336.
revocation of, 378.
with proof of debt, 349.
Power to collect dividends, 380.
Powers of corporations in general, 162.
of partners, 144.
Practice and procedure in copyright cases, rules of, 260.
Preferred stock, application for, 386.
Presentment for payment, 206-210.
what constitutes sufficient, 207.
place of, 207.
when not required, 208.
Presentment of bills for acceptance, 220.
where excused, 222.
Presumption of consideration, 199.
Price, the, in a sale, 88.
definition and ascertainment of, 88.
Principal and agent, 107, 109.—See AGENCY.
Principal's liability, 116.
Private carriers, 233.
Proceedings for abandonment of corporate enterprise, 394.
Promise, unconditional, 194.
Promissory notes, 191, 228.
Proof of claims in bankruptcy, 243.
Proof of claim, form of, 405.
Property, 81.
exemptions of, 106.
partnership, 142.
real and personal, 30.
transfer of, 92.
Protest of bills of exchange, etc., 223-228.
how made, 223.
by whom made, 223.
when to be made, 223.
where made, 224.
when dispensed with, 224.
where bill is lost, etc., 224.
Protest of note, notice of, 421.
certificate of, 421.
Protest, waiver of, 213.
Proxy for annual meeting, 376.
for limited period, 376.
revocation of, 377.
Public carriers, 233.
Purchase, 81.
Purchase of property, agreement for, 384.
Qualified indorsement, 201.
Quit-claim deed, 366.
statutory form, 416.
Quo warranto, 306.
Ratification of agent's act, 112.
conditions of, 113.
Real estate, partnership, 143.
Real property, 30.
Reasonable time, what constitutes, 230.
Receiver's bond, 403.
Records, corporate, 172.
Redemption of bonds, notice of, 359.
Registration of copyrights, 253.
Reissue of patent, 251.
Relative authority, 35.
Release, form of general, 424.
of chattel mortgage, 348, 361.
Remedies for breach of contract, 76, 104.
of the seller, 104.
of the buyer, 104.
for breach of warranty, 105.
Removal of fixtures, 189.
Remuneration of carriers, 235.

Renewal of copyright, 259.
Renunciation by holder of negotiable instrument, 216.
Repairs to leased property, 188.
Reports and Authorities, 33.
Reports of corporation, 173.
Resale by the seller, 102.
Residuary legatee, 307. ,
Resolution to borrow money, 381.
Responsibility of principal, 108.
Restraint of trade, 66.
Restrictions upon commencement of business (corporations), 161.
Restrictive indorsement, 201.
Revocation of proxy, 377.
Right to examine goods bought, 99.
to stop goods in transit, 102.
Rights of an agent, 115.
of corporations, 151.
of holder of negotiable instrument, 203.
of partners, 144.
Risk of loss in sale, 95.
Sale at a valuation, 89.
by auction, 94.
by sample, 92.
of going concern, agreement for, 401.
of partner's interest, 145.
of undivided shares, 87.
SALES, 81-114.
definitions, etc., 81.
essentials of the contract, 82.
examples of sales, 82.
Uniform Sales Act, 83.
formation of the contract, 84.
subject matter of contract, 86.
the price, 88.
goods sold on trial, 89.
conditional sales, 89.
sale at a valuation, 89.
warranties, 90.
sale by sample, 92.
transfer of property, 92.
when property passes, 93.
sale by auction, 94.
risk of loss, 95.
transfer of title, 95.
negotiable document of title, 97.
Performance of the contract, 97.
place, time and manner of delivery, 97.
delivery of wrong quantity, 98,
right to examine the goods, 99
what constitutes acceptance, 99.
unpaid seller's lien, 100.
when lien is lost, 100.
stoppage in transitu, 101.
resale by the seller, 102.
legality of the sale, 103.
effect of illegality, 103.
remedies for breach of contract, 104.
exemptions of property, 106.
Seller or vendor, 81.
Seller's lien, unpaid, 100.
Senders of goods, duties of, 234.
Shares, application for, 386.
held by corporation, 169.
Shop-right, license for, 410.
license with royalty, 411.
Signature by agent, 198.
Silent partners, 141.
Special agents, 108.
Special indorsement, 200.
Special meeting, notice of, 375.
Specific goods, when property passes, 93.
Specific performance, 308.
of contract to sell, 105.
Standard Oil Company, The, 184.
State insolvency laws, 240.
Statement of trademark, 412.
Statute law, 26.
Statutes, 31, 32.
Statute of Frauds, 45, 84.
Statute of Limitations, 308.

Stock, application for, 387.
allotment receipt, 388.
certificate of increase of, 389.
notice of increase of, 390.
issue of, 163.
subscription form, 315.
Stockholders' meetings, 168.
right to vote, 168.
special meeting, notice of, 375.
Stock subscription form, 315.
Stoppage in transitu, 101.
Subagency, 113.
Subject-matter of contract to sell, 86.
Sumptuary laws, 26.
Telegraph companies, etc., liability of, 138.
Tenancy, notice of termination of, 418.
Tenant, landlord and, 185-190.
Tender, 74.
Termination of lease, 190.
Test of bailment, 127.
Time, how computed for maturity, 230.
Time of delivery of goods sold, 97.
Title to certificate and shares, how transferred, 164.
Title to negotiable instrument, when defective, 203.
Trademarks, 247, 412-415.
Trademark, statement of, 412.
declaration of, 413.
notice of opposition, 414.
application for cancellation of, 415.
Transfer of property, 92.
of title, 95.
of stock, 166.
Transit, stoppage in, 101.
when goods are in, 101.
Trusts, 180-184.
Undue influence, 45.
Uniform Negotiable Instruments Act, 230.
Uniform Sales Act, 83.
United States bankruptcy law, 241-246.
United States, Constitution of the, 271-293.
U. S. and States, relative authority of, 35.
Unpaid seller's lien, 100.
Valuable consideration, 59.
Value, 82.
Voluntary dissolution of corporations, 176.
Voting by proxy (corporations), 168.
Wagering contracts, 65.
Waiver of notice of dishonor, 213.
of protest, 213.
Warranties, 90.
Warranty deed, 364.
statutory form, 416.
Warranty of negotiable instrument, 205.
When property passes, 93.
Who may become partners, 140.
Will, short form of, 397.
giving all to wife, 398.
form of codicil, 399.
Witness, affidavit before taking deposition of, 417.

QUESTIONS FOR REVIEW.

CHAPTER I.

Law in General.

1. Give a general definition of *law.*
2. What is meant by the common law?
3. What is the law merchant?
4. What is admiralty law?
5. What state has the Roman or civil law as the basis of its legal system?
6. How was municipal law defined by Cicero? By Blackstone?
7. In what respect was Blackstone's definition defective?
8. Why is law a necessity in a civilized community?
9. Distinguish between written and unwritten law.
10. What two kinds of property are recognized by the law?
11. What is a *chose in action?* A *chose in possession?*
12. What are statutes, and how are they classified?
13. What is the distinction between law and equity?
14. In what way does a court of equity supplement the law?
15. How are the principles of the common law and of equity obtained?
16. What is the relation of the Federal Constitution to state laws?
17. In cases of conflict between the common law and statutes, which prevails?

CHAPTER II.

Contracts.

1. Why is the subject of contracts of the utmost importance in business law?
2. Where is the law of contracts chiefly found?
3. Give a brief definition of a contract.
4. What are the essentials of a contract?
5. Mow may contracts be classified?
6. What is an executory contract?
7. What is meant by an express contract?
8. When is a contract said to be bilateral?
9. What is understood by the "meeting of minds"?
10. Give an example of a valid verbal contract.
11. When may an office be legally revoked, and how?
12. Upon what ground are contracts most frequently avoided, and how?
13. What is the Statute of Frauds, and how does it affect the making of contracts?
14. What parties are held incompetent to enter into contracts?
15. What are the contracting powers of minors?
16. How are the contractual powers of a corporation limited?
17. What is meant by a "good and sufficient consideration"?
18. How is the consideration implied in a promissory note?
19. Give some instances of contracts declared illegal by statute.
20. What is meant by "wagering contracts"? Give an example.

21. How are the terms of a written contract generally construed?

22. Can all contracts be assigned? If not, what are the exceptions?

23. How are contracts discharged? Name the various methods.

24. When is a contract discharged by operation of law?

25. What are the remedies for a breach of contract?

26. If an offer is once rejected, can it afterward be accepted?

27. Is a contract binding where the assent is extorted by force or fear of force?

28. What contract is created by the purchase of a railway ticket?

29. What is the distinction between specialties and simple contracts?

CHAPTER III.

Sales.

1. Give definitions of a *sale* and of a *contract to sell.*

2. What does the term *property* signify in law?

3. What is meant by "future goods"?

4. What are the essentials of a valid sale?

5. What provisions of the Statute of Frauds apply to sales?

6. What will make an oral contract for a sale, under the Statute of Frauds, binding?

7. In sales upon the instalment plan, in whom does the title to the goods rest?

8. What is meant by an express warranty of goods sold?

9. When is there an implied warranty as to quality or fitness of goods?

10. What are the general rules regarding the transfer of property sold?

11. When does the title pass?

12. What are the general rules regarding sales by auction?

13. What are the rights of creditors against sold goods remaining in the seller's possession?-

14. What is a "negotiable document of title"?

15. What is the law regarding the buyer's right to examine the goods?

16. What is stoppage in transitu?

17. How is it determined whether the goods are in transit?

18. Is there any warranty in a sale by sample?

19. What are the buyer's rights in such a sale?

20. Must the seller deliver goods if the buyer becomes insolvent?

21. What is a seller's lien?

22. What remedies for breach of contract have the buyer and seller respectively?

CHAPTER IV.

Agency.

1. What is the nature of agency?

2. What are the agent's duties regarding his principal's business?

3. How are agents appointed?

4. What is the effect of a ratification of an unauthorized act of agency?

5. How can this ratification be made, and what is essential to a good ratification?

6. Why is it important to know the extent of an agent's authority?

7. What is the distinction between general and special agents?

8. What is the duty of a party dealing with a special agent?

9. Can an agent employ another to do his work for him?

10. What is his relation to a sub-agent?

11. In what way only can an agent render his principal liable to a third person?

12. Is a principal liable for unauthorized acts of his agent?

13. How may he become liable for such acts?

14. What effect has the non-disclosure of the principal's identity?

15. What is a factor, and what are his peculiar rights?

16. Distinguish between factors and auctioneers.

CHAPTER V.

Bailments.

1. What is the nature of a bailment?

2. In what does a bailment differ from a sale?

3. What are the parties to a bailment called?

4. What is the bailee's relation to the property bailed?

5. Describe some bailments which are for the bailor's benefit only.

6. What degree of care is required of the bailee?

7. How is the bailment ended?

8. Describe some bailments which benefit the bailee alone?

9. What treatment is the bailee bound to give the property bailed?

10. What is the distinction between bailments for hire and gratuitous bailments?

11. How does a pawn differ from collateral security?

12. Distinguish between a pledge and a chattel mortgage.

13. What care of the property is required of the pledgee?

14. Explain the carrying of the mails as a bailment.

15. What is an innkeeper's responsibility for the property of his guests?

16. How is this affected by modern legislation?

CHAPTER VI.

Partnership.

1. What is the legal nature of a partnership?

2. Who may become partners?

3. Does the sharing of profits alone constitute a partnership?

4. What is meant by a partner's "interest," and may it be sold?

5. What is the distinction between an ostensible and a silent partner?

6. How may partnerships be formed?

7. What is the purpose of "articles of co-partnership"?

8. For what purposes may partnerships be formed?
9. Of how many partners may a firm consist?
10. What is the rule with regard to conveyance of real estate?
11. What is the general liability of partners to third persons?
12. How may a partnership be dissolved?
13. What causes will work a dissolution?
14. What is the effect of a dissolution?
15. What disposal is made of the property of the firm dissolved?

CHAPTER VII.

Corporations.

1. Give a brief definition of a corporation.
2. Whence does it derive its powers?
3. What is meant by the Uniform Business Corporation Law?
4. Who may be incorporators?
5. What should the articles of incorporation contain?
6. May stock subscriptions be paid in property?
7. How must the articles be filed?
8. What restrictions are placed upon the commencement of business?
9. What are the general powers of a corporation?
10. How may title to certificates and shares be transferred?
11. What is the liability of stockholders?
12. How are directors and officers elected or appointed?
13. How may a corporation be dissolved?
14. What is the effect of dissolution?

CHAPTER VIII.

Landlord and Tenant.

1. What is the nature of a lease?
2. What are the parties to a lease called?
3. Describe the usual form of a lease.
4. What covenants are implied in every lease?
5. Is the landlord obliged to make repairs?
6. What is the tenant's chief duty?
7. Is he obliged to make repairs?
8. What is the effect of the termination of a lease?
9. What is the rule in regard to the removal of fixtures by tenants at the end of their leases?
10. Name some general test of removability.

CHAPTER IX.

Negotiable Instruments.

1. What is meant by negotiable paper?
2. Distinguish between accommodation and business paper?
3. Who is ultimately liable on accommodation paper?
4. Give examples of the different kinds of negotiable paper.
5. What is negotiability and how is a bill or note made negotiable?
6. Must such paper have a consideration?
7. What is the purpose of indorsement?
8. What is the distinction between indorsements in full and in blank?
9. What is the effect of an indorsement "without recourse"?

10. Why are presentment and demand necessary?
11. Where and at what time of day should demand be made?
12. What is a notice of dishonor?
13. How may such a notice be given?
14. Is it the same as a "protest"?
15. Who should give notice of protest, and to whom?
16. Who is liable for the payment of a bill or note?

CHAPTER X.

Common Carriers.

1. What is a common carrier?
2. Are all carriers of goods or passengers common carriers?
3. What are the duties of a common carrier?
4. How far and by what means can the carrier of goods modify his liability?
5. Who is liable for the freight?
6. What security has the carrier for his charges?
7. In what respect is a carrier of passengers a common carrier?
8. What constitutes baggage?
9. Is the carrier responsible for hand baggage?
10. What duties are required of shippers?
11. What is the carrier's duty regarding delivery of goods?
12. What facilities is he bound to provide?

CHAPTER XI.

Bankruptcy.

1. What was the origin of insolvency laws?

2. What is the specific character of bankruptcy laws?

3. How are the insolvency laws of the various states affected by the United States Bankruptcy Law of 1898?

4. What are acts of bankruptcy?

5. Who may become bankrupts?

6. What steps are required to be taken for the proof of claims?

7. How are dividends declared and paid?

8. What is meant by the discharge of the bankrupt?

CHAPTER XII.

Patents and Copyrights.

1. What may be patented, and what rights are thus acquired?

2. What is absolutely necessary before anything can be patented?

3. What is the duration of a patent?

4. Can a patent be renewed, and for how long?

5. Describe the different steps to be taken in obtaining a patent.

6. Can a patent be assigned?

7. What persons are benefited by the Copyright Law?

8. Describe the steps necessary in obtaining a copyright.

9. How long does a copyright remain in effect?

10. How can a copyright be assigned?



